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# SUPREME COURT OF THE UNITED STATES

October Term, 1983

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SHIRLEY McGAUGHEY, a/k/a
SHIRLEY ZIGORIS and
GUY E. McGAUGHEY, JR. - - - - Petitioners

*versus*

MARK ZIGORIS - - - - - - - Respondent

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY
AND
## APPENDIX

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November 29, 1983

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## QUESTIONS PRESENTED

1. May a Kentucky Court refuse to enforce an Illinois *in personam money order* for *accrued child support* in violation of the mandatory recognition accorded the Illinois *in personam* order under the Full Faith and Credit Clause of the United States Constitution and its enabling Statutes?

2. Does the Kentucky version of the Uniform Child Custody Jurisdiction Act have any application whatsoever to such an Illinois *in personam order* for accrued child support where the Father lives in Indiana and the Mother and the children live in Illinois?

3. May the Kentucky version of the Uniform Child Custody Jurisdiction Act, which was not in effect in either Kentucky or Illinois, at the time of the Illinois *in personam proceedings,* be retroactively elevated to superiority over the Full Faith and Credit Clause of the United States Constitution, which requires mandatory recognition by Kentucky of an Illinois *in personam* child support order.

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**Footnote: Parties are the same as in the caption of the cover page of this Petition for Writ of Certiorari.**

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# SUPREME COURT OF THE UNITED STATES

**October Term, 1983**

**No.**

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SHIRLEY MCGAUGHEY a/k/a
SHIRLEY ZIGORIS and
GUY E. MCGAUGHEY, JR. - - - - - *Petitioners*

*v.*

MARK ZIGORIS - - - - - - - *Respondent*

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

---

The Petitioner, SHIRLEY ZIGORIS (now MCGAUGHEY), respectfully prays that a Writ of Certiorari issue to review the Memorandum Opinion of the Supreme Court of Kentucky entered in this proceeding on May 11, 1983.

## OPINION BELOW

The opinion of the Supreme Court of Kentucky (Appendix B) and the dissent (Appendix C) were not published. A Petition for Rehearing was filed and an order of the Supreme Court of Kentucky was entered denying the Petition for Rehearing on August 31, 1983. (Appendix A) The Kentucky Appellate Court Opinion, The Kentucky Trial Court Opinion, Judgment, and the Illinois Orders are all included in the Appendices. (See Table of Contents)

## JURISDICTION

The Memorandum Opinion of the Supreme Court of Kentucky affirming the Kentucky Court of Appeal's decision was entered May 11, 1983, and a timely Petition for Rehearing was denied by Order of the Supreme Court of

Kentucky on August 31, 1983. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 4, §1 of the Federal Constitution granting mandatory recognition under Full Faith and Credit by Kentucky of an Illinois final in personam order for child support of her two minor children, states:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The enabling Act of Congress is 28 U.S.C. §1738, which provides:

> "The Acts of legislature of any State, Territory, or Possession of the United States or copies thereof, shall be authenticated by affixing the seal of such State, Territory, or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory, or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestations of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

## STATEMENT OF THE CASE

### Illinois Judicial Involvement

The most recent custody proceedings between the parties were in Illinois on December 18, 1978, when the Father, the Mother and the children, personally and through counsel, appeared in open Court. Without objection of the Father through his Illinois counsel, the two Illinois cases were consolidated. After the hearing, where all parties and the children were personally present in Court with their counsel, with witnesses, the Court awarded temporary custody to the Mother and made the following findings:

> *The Court:* Well, in reading all these cases presented by both sides, I think they all finally boil down to one thing. If there's been a full hearing as to the best interests of the children in some court where all parties are present and all issues are raised, then, of course, full faith and credit is given to that decree or order, but where it appears that there has been no full hearing where all the parties have been present, including the children, then they do not grant full faith and credit, and *it appears from the pleadings and all the records here that perhaps no complete hearing has been held in this matter,* so I will deny your motion to dismiss and order a full hearing, and then the Court will assume jurisdiction.
>
> Now, as to the motion to dismiss 78-MR-5, it appears that there's the same issue raised. Both cases go to the same issue, so I can either dismiss or consolidate. We only need one hearing, and I don't believe you really raise any new issues that weren't already raised in 78-MR-2. If there are some new issues, I don't recognize them. We could consolidate for the purpose of a full hearing. I would see no problem there, or I could dismiss and give you leave to file an amended answer in 78-MR-2 to raise any issues that—

*Mr. Douglas:* (Father's attorney) We'll consolidate them, Your Honor. (R. 168)

Parenthetically, it should be noted that this Illinois *hearing on December 18, 1978, was the first Court hearing since 1973 with the parents and children present where the best interests of the children were considered, including changed circumstances from 1973 to 1978.*

The Court entered a formal order February 8, 1979, granting the Mother temporary custody of the two minor children, Andre and Alexia.

The pertinent portions of the Illinois Statutes under which the Illinois Trial Court assumed jurisdiction in December, 1978, and February, 1979, are as follows: (R. 352, 353)

Ch. 40 § 601: Jurisdiction—Commencement of Proceeding:

(a) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or *modification judgment* if:

(2) it is in the best interest of the child that a court of this State assume jurisdiction because the child and his parents or *the child and at least one contestant have a significant connection with this State,* and there is available in this State *substantial evidence* concerning the child's *present* or future *care, protection,* training and personal relationships; or

(3) the child is physically present in this State and has been abandoned, or is neglected and dependent, or *it is necessary in an emergency to protect him because he has been subject to or threatened with mistreatment or abuse.*

Ch. 40 § 610: Modification: (R. 353)

(a) No Motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits

that there is reason to believe the child's present environment may endanger seriously his physical, mental or emotional health.

(b) The court shall not modify a prior custody judgment unless it finds, upon the basis facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, *that a change has occurred in the circumstances of the child or his custodian* and that the *modification is necessary to serve the best interest* of the child. In applying these standards, the court shall retain the custodian appointed pursuant to the prior judgment unless:

(2) *the child has been integrated into the family* of the *Petitioner with consent of the custodian;* or

(3) the child's present environment endangers *seriously his physical, mental or emotional health* and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

There was evidence before Judge Whitmer on December 18, 1978, the mother qualified under the jurisdictional requirements of §601(a)(2) and §601(a)(3) under the Illinois Marriage and Dissolution Act cited above. The Court applied the tests for the best interests of the child set forth in §601 and further found that the Mother qualified under the provisions of §601(b)(2) for modification of the Indiana decree (integration of Andre by consent of father) and (b)(3) (chemical addiction of Andre to narcotic drugs and promiscuity in the home of the Father as to Andre and Alexia) cited above.

Kentucky, on February 9, 1979, had jurisdictional standards, not only substantially in accordance with the Illinois statutes, but almost identical in wording (R. 354, 355). K.R.S. 403.260 1(b), 1, 2, 403.260(1) c, 2, 403.270, 403.340 (1), (2) (1979).

The Uniform Child Custody Jurisdiction Act (UCCJA) was not in effect in Kentucky or Illinois at the time the Mother was granted temporary custody of the children at the hearing in December, 1978, nor at the time of the formal order in February, 1979. Illinois adopted its version of the UCCJA 9/11/79, Kentucky did likewise, 7/15/80. 28 U.S.C.S. § 1738(a) became effective 12/28/80.

An Appeal in Illinois by the Father was only permissive by certificate of importance from the Trial Court. The Father's counsel requested the Trial Court to certify the question of subject matter jurisdiction to the Appellate Court and for permission to appeal. The Trial Court's Order, 4/25/79, of certification and permission states:

> 1. That the Court has in personam jurisdiction of the parties.
>
> 2. That the Order involves a question of law as to which there is substantial ground for difference of opinion.
>
> 3. That an immediate appeal from the Order may materially advance the ultimate termination of the litigation.
>
> 3. That the question is whether or not this Court, based upon the file and record in this cause, has jurisdiction of the minor children of the parties hereto and the Respondent to proceed to a full and plenary hearing on the merits as to custody as is provided in Illinois Revised Statutes, Chapter 40, Sections 601(a)(2), 601(a)(3), 602 and 610.
>
> The Trial Court hereby requests the Appellate Court to allow an appeal from the Order wherein this Court finds it has jurisdiction of the parties hereto and the subject matter hereof. (R. 176)

*Three Illinois Appellate Justices reviewed* the case, and affirmed Illinois had subject matter jurisdiction. (R-177) (Appendix J)

Subsequently, the Illinois Trial Court entered an in personam money order on 4/22/80 directing the Father to pay the *following divisible amounts* for the support of his children:

ANDRE

a. Past Support of $22,400.00 through April, 1980, $800/month beginning May, 1980,
b. $7,469.80 for Andre's medical expenses in Fairview Community Hospital, Minneapolis, Minnesota, for treatment in the fall of 1980 for his drug or chemical dependency; (Appendix T)

ALEXIA

a. Past Support of $22,000.00 through April, 1980,
b. $800/month beginning May, 1980; in addition to $1,500.00 for the Mother's attorneys fees. (Appendix H)

The Supreme Court of Kentucky in its May 11, 1983 opinion (Appendix B) denied the Mother the right to enforce in Kentucky for the benefit of the minor children the Illinois in personam child support order. The opinion of the Kentucky Supreme Court is the opinion which we seek to have reversed.

**Kentucky Judicial Involvement**

The parties and their children resided in Kentucky for a short time in 1966 and 1967 and again from 1970 to 1973. Except for a brief period in late 1977 when Andre, *with the Father's consent,* lived with the Mother in Kentucky, none of the children have resided since 1973. In addition, the

Father has not been a Kentucky resident since 1973, nor the Mother since 1977. No Kentucky Court has entertained custody or support proceedings concerning these children since 1973, except for the instant proceeding to enforce the Illinois support payment. Kentucky is not a prospective forum for the children's residence or future care.

**Kentucky Trial Court**

In June, 1980, the Mother filed a Petition in the Jefferson Circuit Court, Louisville, Kentucky to enforce a *final* Illinois support order praying for the Court to grant comity. Her attorney, who is also the step-father, was added as Plaintiff for attorney's fees awarded in the Illinois support order.

The Mother filed a Motion for Summary Judgment stating the non-residence of the parties and positing the non-applicability of the UCCJA and the Mother's entitlement to Full Faith and Credit. In her brief, she cited the *Davis, Williams, Sherrer,* and *Coe* U. S. Supreme Court decisions. These were re-argued in her exceptions to the Court's Findings of Fact and Conclusions of Law. The Kentucky Trial Court found it lacked jurisdiction to modify the Illinois Custody Decree but refused to enforce its support order. The Mother filed a Motion to Reconsider, which was denied. In its opinion, the Kentucky Trial Court specifically refused to recognize the Full Faith and Credit Clause and did not cite or distinguish any of the many, long standing, supportive, United States Supreme Court decisions repeatedly cited by the Mother's counsel.

**Court of Appeals of Kentucky**

The Mother took an Appeal. After briefing and oral argument, the Court of Appeals affirmed the Trial Court's

decision. Throughout the briefing and oral argument, and the Petition for Re-Hearing, the Full Faith and Credit question was strenuously argued by both sides. The Appellate Court refused to grant recognition to the Federal Full Faith and Credit Clause, failing to cite any supportive United States Supreme Court decisions nor distinguish them. The Mother filed a Petition for Rehearing, which was denied.

**Supreme Court of Kentucky**

The Mother filed a Motion for Discretionary Review with the Kentucky Supreme Court which was granted. The Full Faith and Credit issue was orally argued and briefed throughout the Kentucky Supreme Court proceedings, including the Petition for Rehearing. The Supreme Court of Kentucky specifically rejected the Full Faith and Credit Clause and refused to enforce the Illinois Support Order, with two justices dissenting. The Supreme Court's opinion is attached as Appendix B, the dissenting opinion of two Justices as Appendix C. The Mother filed a Petition for Rehearing with citations, which was denied. The majority opinion of the Kentucky Supreme Court also failed to cite or distinguish the U. S. Supreme Court decisions, which are in conflict with the Kentucky decision.

**Narrative Background Material Facts**

This is a *classic case of a Father's child abuse and custodial neglect* of his two minor children which suddenly became critical and apparent in the winter of 1977 and the spring of 1978.

The Father had had custody for more than seven years when the minor son *overdosed* and *nearly killed himself*, prompting a child psychologist to insist that the Mother

have immediate and permanent custody. This was immediately done with the Father's consent.

The facts are relatively simple except for the period from this occurrence in late 1977 until the Illinois Trial Court awarded the Mother temporary custody of the two minor children after an in personam hearing in December, 1978.

The parties met in England (R. 77) while the Father was stationed there with the U. S. Armed Forces (R. 77). The Mother is a native English lady from Scunthorpe, Lincolnshire, England. The parties were married May 26, 1963, in Youngstown, Ohio. Three children were born of this marriage, Dean, March 17, 1964, in Youngtown, Ohio, Andre, April 24, 1965, in Columbus, Ohio, and Alexia, June 3, 1967, in Louisville, Kentucky. The parties were divorced March 31, 1970, by the Clark County, Indiana, Superior Court. The Superior Court ordered the best interests of the children at that time required custody be awarded to the Father until further order of the Court, the Court specifically finding that the Court *made no determination that the Mother was not a fit and proper person* to have custody of the children, but at that time her mental condition dictated that custody be awarded to the Father (R. 40, 41). In the decree, custody was awarded to the Father, and the Mother was awarded *$10.00 a week* maintenance until she had received a total of *$130.00* (R. 41). The Father paid the Mother's attorneys fees. The Mother had no family in America and few friends due to the frequent changes of residence and her having been a full time Mother to her infant children, the daughter being less than 3 years old at the time of the divorce and the two sons being pre-school age at the time the children were taken from her.

The Mother then acquired her own residence in Jeffersonville, Indiana, became gainfully employed and approached the Indiana Trial Judge for a hearing whereby she should get custody of the children, but by that time, the Father had moved the children across state lines to Kentucky. The Trial Judge told the Mother he was powerless to act because the Father and the children now resided in Kentucky (R. 78). *The first act of crossing state lines was at the Father's instance.* The Mother then followed and moved to Kentucky (R. 78).

In late 1971, the Mother filed a Petition for Custody of the children in Jefferson Circuit Court, Louisville, Kentucky, Cause No. CR-153-871, asking for modification of the Indiana decree. After a delay of nearly a year and a half, the Kentucky Trial Judge affirmed the Indiana decree on January 25, 1973, stating he saw no reason to change the situation since there was an elderly babysitter in attendance (R. 44, 45). A few months later, in June, 1973, the Father moved the children back across the state line to Jeffersonville, Indiana (R. 100), while the Mother remained a resident of Kentucky. *The second act of crossing the state lines was at the Father's instance.*

The *Father brought marijuana into the children's home* in Indiana on a periodic basis over a period of five years, together with large doses of Valium, which he, as a dentist, was able to acquire as a prescription drug (Transcript of hearing before Judge Paynter 10/11/78, pp. 40, 41, 42). (Appendix M). Also see Andre's affidavits in the record. (Appendix N, O).

The middle child, Andre, became a user of narcotic drugs, dealt in his Father's marijuana, and became addicted. In December, 1977, Andre overdosed on Valium and beer and nearly killed himself. The Father sent the child

to a child psychologist in Louisville, Kentucky, who ordered the child immediately turned over to the Mother. Andre then went to live with his Mother in Louisville *with the Father's consent* (Transcript of hearing before Judge Paynter 10/11/78, pp. 38, 39, 40, 41, 45).

> "The Court: *Mr. Zigoris, did you agree to let Andre live with them?*
>
> Mr. Zigoris: *Yes, I did.*" (Appendix M, Q. 37)

The Mother remarried and moved to Florida, taking Andre with her (R. 79). At spring break, the other two children, Dean and Alexia, visited their Mother and brother in Florida. During this visit, the Mother learned Andre had been getting marijuana from his Father for five years, *was smoking it, selling it* to his friends, and that two teenagers *had broken into the Father's bedroom* and had *stolen more than a pound of marijuana,* peddled it at school, got caught, and confessed to the Indiana probation officer. The Mother further learned that a teenage girl living next door to Alexia and Andre was uncontrollably promiscuous, *performing fellatio* on many young boys, *even in the Father's home,* not a fit and proper atmosphere for a ten year old daughter and twelve year old son (R. 80, 81). *The elderly babysitted had died,* being replaced by a teenage babysitter who knew about the marjuana and fellatio scene, permitting it to take place (R. 80).

The Mother, through an attorney in Indiana, contacted the Indiana Superior Court and asked for an emergency hearing, but the *Indiana Trial Judge* in Chambers refused same, *even though he knew of the drug history of the Father* due to prior criminal proceedings in his Court against the boys stealing a pound of marijuana from the

Father's bedroom (Transcript of hearing before Judge Paynter 10/11/78, page 40). (Appendix N)

Alexia was enrolled in Cape View Elementary School, Cape Canaveral, Florida, April 10, 1978 (R. 81), and the next day, the Father came to Florida, and in the absence of the Mother, took Alexia out of school and back to Indiana (R. 82). Four days later, the Mother appeared before Judge Salfi in Florida and *obtained temporary custody of Andre,* but not of Alexia, who had been removed to Indiana by the Father (R. 113). April 20, 1978, the Mother took Alexia out of the Indiana school and returned with her to Florida.

On May 8, 1978, the Mother *obtained* an order from Judge Salfi in Florida of *temporary custody of Andre and Alexia* (R. 115), so they could finish the school year in Florida and have a hearing on the best interests of the children. Two days later, May 11, 1978, Florida Judge Dykes with concurrent jurisdiction overruled the two orders of Judge Salfi, *without testimony or presence of the Mother and children,* and ordered all sheriffs in Florida to pick up the Mother and return Alexia, but not Andre, to the Father in Indiana (R. 203). The Mother left Florida with Alexia, leaving Andre with the stepfather in Florida to finish the school year.

The Mother and daughter moved to Lawrenceville, Illinois (R. 83), where the stepfather's grandfather, father and he had lived and had been lawyers for three generations, and where the stepfather had been raised, educated, and had his domiciliary residence. The stepfather and Andre remained in Florida until Andre finished the school year, whereupon the stepfather and Andre moved to Illinois to live (R. 83).

June 7, 1978, the Mother filed a petition in the Circuit Court of Lawrence County, Illinois, for modification of the 1970 Indiana Custody decree (R. 118), and on June 29, 1978, an ex parte hearing was held before Judge Robert S. Hill in Benton, Illinois. Judge Hill *entered a ten day restraining order* against the Father removing the children from the state of Illinois (Transcript of hearing before Judge Hill 6/29/78, page 43).

On June 12, 1978, the Mother applied for Andre to enter Culver Military School for the summer session in Culver, Indiana. Andre's application *was denied because of his drug history* and *that of his Father* (R. 131). (Appendix Q) At the persuasion of the stepfather, a Culver graduate, of Andre's rehabilitation, and Dr. Colley's letter (Appendix R), Culver re-evaluated the application, and accepted Andre for the 1978 summer session (R. 134, 135). (Appendix S) The *Father visited Andre* at Culver, Indiana, but *did not remove him from school* (R. 83).

July 14, 1978, Florida Circuit Judge Dykes, in the absence of the Mother and the children, entered a judgment drafted by Father's counsel affirming the 1970 Indiana custody decree and awarded the Father $5,048.69 consisting of $2,500 attorney's fees, $763.66 travel expenses, court costs, and "investigator's fees" of $2,145.03 (R. 202).

On August 19, 1978, the *Father* came to Illinois, *was served personally* by an Illinois sheriff with the *summons in Lawrence County, Illinois* (R. 25), which summons required the Father to answer the modification of custody proceedings filed by the Mother in Illinois June 7, 1978.

On September 6, 1978, after the Father was served personally with the Illinois summons, Indiana counsel for the Father issued a Rule to Show Cause why the Mother should not be held in contempt of court in Indiana. Sep-

tember 21, 1978, notice was mailed from Indiana to the Mother in Illinois. The Mother filed *her Special Appearance* to the Contempt Proceedings in Indiana on the grounds that *another proceeding in Illinois was pending wherein a restraining order had been issued against the Father* (R. 50).

October 11, 1978, the Father, stepfather, and Andre appeared before Indiana Superior Court Judge Paynter on a citation for a rule to show cause, *not a modification of the custody proceedings.* The *Judge acknowledged he knew about the Father's use of drugs* and *did not order the child to be given to the Father while Andre was in the courtroom* testifying in detail about the drug history of the Father (Transcript of hearing before Judge Paynter 10/11/78, page 40). (Appendix M). Notwithstanding the Court's knowledge of the use of drugs of the Father and the fact that Andre had been voluntarily turned over to the Mother by the Father, Judge Paynter by order, 11/6/78, found the Mother in contempt of court and ordered both Andre and Alexia returned to the Father (R. 55) and his drug scene.

On December 14, 1978, the Father voluntarily filed and initiated a separate proceeding as a party Plaintiff in Illinois for a Writ of Habeas Corpus and Writ of Ne Exeat (78 MR-5) (R. 126).

On December 18, 1978, the Father, the Mother and children personally and through counsel appeared in open court before the Illinois Trial Judge. Without objection by the Father through his Illinois counsel, the two Illinois cases were consolidated.

The progression of the Illinois judicial proceedings and the Kentucky judicial proceedings have been previously summarized in this Petition for Writ of Certiorari (pages 4-9), *supra.*

## ARGUMENT

### I. The Illinois Circuit Court Had *In Personam* Jurisdiction of the Parties

The Mother filed on June 7, 1978, a Petition in the Circuit Court of Lawrence County, Illinois, for modification of the 1970 Indiana custody degree (R. 118). August 19, 1978, the *Father* came to Illinois, was *served by an Illinois sheriff personally with summons in Lawrence County, Illinois* (R. 25), (78-MR-2).

The Father filed a special appearance contesting the subject matter jurisdiction of the Illinois court.

December 14, 1978, the Father paid the filing fees, voluntarily filed and initiated a separate proceeding as a party Plaintiff in Illinois for a Writ of Habeas Corpus and a Writ of Ne Exeat (78-MR-5 (R. 126) and a summons was served on the Mother.

The parties appeared personally before the Illinois Trial Court on December 18, 1978, in open court with counsel and with the children present.

The Illinois Trial Court found that it had in personam jurisdicion and consolidated the two cases (78-MR-2, 78-MR-5), and based on evidence presented, granted temporary custody to the Mother of Andre and Alexia by docket entry December 18, 1978, formalized by written order February 8, 1979.

### II. The Illinois Judgment as to Accrued Arrearages Is Final and Non-modfiable

*Griffin* v. *Griffin*, 327 U. S. 220, 66 S. Ct. 556, 90 L. Ed. 635 (1946); *Sistare* v. *Sistare*, 218 U. S. 1, 30 S. Ct. 682, 54 L. Ed. 905 (1910); *Barber* v. *Barber*, 323 U. S. 77, 65 S. Ct. 137, 89 L. Ed. 82 (1944). The law is equally well-settled that Kentucky must look to Illinois law to determine

the extent of modification. *Worthley* v. *Worthley*, 44 CA 2d 465, 283 Pac. 2d 19 (1955); *Light* v. *Light*, 12 Ill. 2d 502, 147 N. E. 2d 34 (1958); *Restatement (Second) of Conflicts of Laws*, ¶109 (1971).

As to Illinois law on finality, we respectfully call the Court's attention to ¶510 of the Illinois Marriage and Dissolution of Marriage Act (Ill. Rev. Stats. 1977, Ch. 40, ¶510). ¶510 dictates a judgment of maintenance or support may not be modified retroactively but may be modified prospectively only upon a showing of changed circumstances Moreover, Illinois courts have consistently ruled facts which were the basis of the original decree became *res judiciata*, and that changed circumstances justifying modification of support must occur since the date of the decree. *Sullivan* v. *Sullivan*, 98 Ill. App. 3d 928, 424 N. E. 2d 957, 54 Ill. Dec. 207 (1981); *Dixon* v. *Dixon*, 45 Ill. App. 3d 934, 4 Ill. Dec. 550, 360 N. E. 2d 486 (1977). There is a host of Illinois and Kentucky cases holding *past due installments* of child support money *are a vested right of the mother*, not subject to modification, either as to amount or time of payment, by any court order, unless made pursuant to petition to modify, and the effect of such modification operates prospectively only. In Illinois, *Armstrong* v. *Armstrong*, 83 Ill. App. 3d 1062, 39 Ill. Dec. 417, 404 N. E. 2d 1008 (1980); *Hoos* v. *Hoos*, 42 Ill. Dec. 174, 86 Ill. App. 3d 817, 408 N. E. 2d 752 (1980). *In Kentucky, Stewart* v. *Raikes*, Ky., 627 S. W. 2d 586 (1982); *Dalton* v. *Dalton*, Ky., 367 S. W. 2d 840, 842 (1963); *Whitby* v. *Whitby*, 306 Ky. 355, 208 S. W. 2d 68 (1948).

**III. The Kentucky Uniform Child Custody Jurisdiction Act Is Inapplicable to These Kentucky Proceedings.**

The Kentucky Supreme Court *has mis-interpreted* and *mis-applied* the Uniform Child Custody Jurisdiction Act.

FIRST: The Uniform Child Custody Act only applies to custody decrees and the modification thereof, not to the collection of foreign support orders. These are two distinct issues and covered by two distinct uniforms acts. K.R.S. 407 (Uniform Reciprocal Enforcement of Support Act) (1972) is just as much the law of Kentucky as the subsequently enacted UCCJA and it, not the UCCJA, covers the enforcement of a support order from a sister state. Illinois also has passed a Revised URESA—1979.

SECOND: Modification of the custody of the two minor children was not and could not be an issue in Kentucky since the Father lives in Indiana and the children and Mother live in Illinois. There was no basis for the Kentucky Court to invoke jurisdiction of the UCCJA or its terms.

THIRD: A more careful reading of the UCCJA would reveal that that Act does not apply. Sub-section 8(b) does not come into operation unless the Court has power under Section 14 to modify the custody decree of another state (see the Commissioner's notes). Obviously, Section 14 did not come into operation because Kentucky did not have the power to modify the custody decree.

FOURTH: Since UCCJA is a state law, it cannot, consistent with the U. S. Constitution prescribe Full Faith and Credit to be granted to sister state decrees. A state law cannot legislate Full Faith and Credit without intruding into the province of the Supreme Court or Congress. Katz—Child Snatching—p. 6.

FIFTH: The Kentucky Supreme Court, in effect, has retroactively applied a Kentucky UCCJA in a time frame when it was not in existence either in Illinois or in Kentucky. The Kentucky Supreme Court is attempting to apply retroactively, in point of effectiveness, to considera-

tion of the issues before the Illinois Trial Court, which UCCJA he did not have before him at the time he rendered his decision. Neither the State UCCJA or 28 U.S.C. 1738 (a) can be applied retroactively.

SIXTH: In rendering its opinion, this Court has utterly ignored "the guiding star" of custody cases: *the best interests of the children.*

Section 8(b)—the child abduction section of the UCCJA starts with "Unless required in the interest of the child."

This emergency jurisdiction exception overrides the UCCJA because it exists to honor rights higher than those held by the custodial parent or the State. (Katz, pp. 6-7) Clearly, the best interests of the children must prevail. The best interests of the Zigoris children did not include the illegal drug history of the Father or his parental misconduct to the point when one child nearly kills himself and the other child is exposed to the Father's drugs plus fellatio by a next-door neighbor in the custodial home.

The Illinois Supreme Court has plainly held the best interests of the children should prevail and a hearing should be held where all parties are present, *Strand* v. *Harnetiaux* (Ill. S. Ct. 1970), 46 Ill. 2d 418, 263 N. E. 2d 30. The Trial Court of Illinois followed the decision of its Supreme Court.

SEVENTH: Since this is an *in personam* order from a sister state, the parents and children being non-residents of Kentucky, the reasoning of the Kentucky Supreme Court as to jurisdictional standards of the UCCJA which were not in effect in either state at the time of the Illinois custody decree completely overlooks Section 8(b) and 14(a) and is totally irrelevant. This *Court's interpretation* of the UCCJA renders its *interpretation* of the Act as *unconstitutional* in violation of the Full Faith and Credit Clause of the U. S. Constitution.

## IV. Material Facts as to Andre Overlooked by the Kentucky Supreme Court.

DRUG ABUSE BY FATHER OF ANDRE AND NO CHILD SNATCHING OF ANDRE BY MOTHER—The record is totally bare of any forceful removal or child abduction features by the Mother of Andre. It is undisputed Andre overdosed on Father's Valium and beer, prompting the child psychologist, engaged by the father, to insist the child be turned over to the Mother in the late fall of 1977. The Father agreed, helped pack Andre's clothing and voluntarily turned him over to the Mother's care. In his sworn testimony before Judge Paynter 10/11/78 (Transcript, p. 45), the Father admitted this:

> The Court: *Mr. Zigoris did you agree to let Andre live with them?*
>
> Mr. Zigoris: *Yes, I did.* (Appendix M, Q. 37)

The Mother, then living in Kentucky, removed Andre to Florida, enrolled him in a Florida school, with new friends, a new environment and a new start away from his Father's environment of illegal and prescriptive drugs, and former acquaintances where the child was dealing in drugs brought home by his Father. His Mother, in the summer of 1978, entered him in summer school at Culver Military Academy, Culver, *Indiana*, the step-father's alma mater, over the ***initial rejection by Culver of Andre for his and his Father's drug history.*** The Father visited Andre, at *Culver, Indiana, the Father's home state,* that summer, ***but did not attempt to remove him.***

**In the fall of 1978, Andre attended school in Lawrenceville, Illinois, and then later was flown to *Minneapolis, Minnesota, where his Mother voluntarily enrolled him in a chemical dependency hospital for a period of 2 months***

*(2 more months were spent as an out patient), the treatment costing nearly $8,000.00.* It is inconceivable that any court would conclude that the Mother, who was given Andre *voluntarily* by the Father and a child psychologist, was doing anything but rehabilitating Andre and his drug damage due to the Father's illegal drug activity and custodial neglect. In no way did the Kentucky Supreme Court, or any other court, have even a scintilla of evidence for an indictment of the Mother for child snatching of Andre. *It simply did not occur.* We submit that these are all material facts ignored by the Supreme Court.

How could the child abduction language of the Ky. USSJA be applicable to Andre? They can't. The Kentucky Supreme Court, in listening to the hide and seek, seize and run script of the Father, has completely forgotten Andre was turned over to the Mother voluntarily by the Father, not swiped and ridden off to Florida as a part of a soap opera scenario. Andre was never in hiding or abducted as the mis-stated facts of the Court's opinion would seem to indicate. Appellate Judge Wilhoit's underlying rationale of child abduction affirmed by the Kentucky Supreme Court does not apply to Andre, whose support order is divisible. It should have been enforced without hesitation.

## V. Material Facts as to Alexia Overlooked by the Kentucky Supreme Court.

As to Alexia, there is in personam jurisdiction and no forum shopping by the Mother who had a *proper alternative legal channel* to pursue, which she did. As to child retention of Alexia, the Mother, upon hearing of fellatio in the Father's home, with the teenage male sitter in attendance, in addition to the Father's excessive prescrip-

tive and illegal drugs being present, acted as any normal Mother would act upon learning of the true circumstances in the home of the Father.

Is retention of Alexia, entirely outside of Kentucky, more important than child abuse, drug addiction, parental neglect and changed circumstances as to the children between 1973 and 1978? The question answers itself.

The Illinois Court, in *Hinton* v. *Searles,* (Ill. App. 5th District, 1977) 53 Ill. App. 3rd 433, 368 N. E. 2d 937, 11 Ill. Dec. 329 (1977), ruled that the *overriding welfare of Alexia* is the *controlling issue* when it stated,

> *"nor should the proper custody determination be made to depend on whether the Mother was in fact a fugitive from justice."*

Likewise, in *Slidell* v. *Valentine, Iowa,* 298 N. W. 2d 599 (1980), *"the clean hands principle should not be followed if doing so would jeopardize the best interest of the child. A custody award is not to punish or reward a parent."*

The best interests of the children should be the focus of inquiry of any Court rather than subjectively balancing the parent's activities. The Kentucky Supreme Court, in this case, wrongly rejected the best interests of the children. Fortunately, it did not have jurisdiction to decide collaterally that issue. *Milliken* v. *Meyer,* 311 U. S. 457, 462, 61 S. Ct. 339, 342, 85 L. Ed. 278, 282-83 (1940)

## VI. Mis-statement of Material Facts by the Kentucky Supreme Court in Its Opinion.

The following glaring inaccuracies appear in the Kentucky Supreme Court's Opinion.

1) "She further applied for support for these children in a hearing in which she alleged, and in fact still alleges before this Court, that in 1979 the Movant, and Alexia,

and Andre had been continuous residents of Illinois for the four years next preceding the application. To say the least, this flies, etc." (op. p. 3). This is total error. Movants made no such allegation of 4 years residence in Illinois prior to 1979, either in the Illinois or the Kentucky proceedings. (See Petition for Temporary Support—Appendix I).

2) "The father, . . . again sought the help of the Court in locating both Alexia and Andre and finally a hearing was held on June 26, 1978 . . . The Florida record disclosed the husband stated he did not know his wife's whereabouts or did not know the whereabouts of the children." (op. p. 2). While Alexia and Andre were enrolled in Florida schools, on May 11, 1978, Movant's husband stated he was unaware of the mother's, not the children's, location at that particular moment. This was the only Florida "hearing" attended by the Movant's husband and was nonevidentiary. The implication that the husband was at the "hearing" on June 26, 1978 and he didn't know where the mother and her children were is likewse totally erroneous. By June 26, 1978, the Mother had already filed, on June 7, 1978 a Petition for modification of custody with the Illinois Court. And on that date, Alexia was at home with her Mother and *step-father in* Illinois and Andre was in Culver Summer School, Culver, Indiana. The Florida "judgment" drafted by Father's attorney is dated July 14, 1978. The Court's opinion was again wrong, suggesting it did not read the record accurately.

3) "About three days after the hearing in Florida the Movant, represented by her husband, secured an order from an Illinois Court at her husband's former home town . . . *awarding her custody of Andre and Alexia.*" (op. at p. 3). June 29, 1978, an ex parte hearing was held be-

fore Judge Hill in *Benton, Illinois,* over 100 miles from Lawrenceville. Judge Hill entered *a 10-day temporary restraining order* prohibiting the father from removing the children from Illinois. After the Father took a change of venue from Judge Hill to Judge Whitmer *who lived in Robinson,* Illinois, *home of the Father's attorney,* custody was not awarded to Movant of Andre and Alexia *until December 18, 1978, (not June 29, 1978)* with in personam jurisdiction and both parents and children present. The Court's opinion again incorrectly misconceived and misstated material facts in the record.

## VII. Reasons for Granting Writ.

*Supreme Court Rule 17(b)* — The Kentucky Supreme Court, a state of last resort, has refused to give Full Faith and Credit to an order of an Illinois Appellate Court, also a state of last resort, holding Illinois had subject matter jurisdiction to modify an Indiana Decree giving the Mother temporary custody of her two minor children and the right to enforce a support order for them. The Kentucky Trial Court held *"Illinois should have declined to enter any orders with reference to the Zigoris children".* (Appendix G) His collateral attack on an in personam order has been affirmed by the Kentucky Supreme Court and flies in the face of the Full Faith and Credit Clause of the Constitution.

*Supreme Court Rule 17(c)* — In refusing to grant Full Faith and Credit to an Illinois in personam support order, the Kentucky Supreme Court has decided the federal question of Full Faith and Credit in a way which is in conflict with the applicable decisions of this Court namely, *Sherrer* v. *Sherrer,* 334 U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 2d 1429 (1948); *Coe* v. *Coe,* 334 U. S. 378, 68 S. Ct. 1094, 92 L. Ed. 1451, (1948); *Davis* v. *Davis,* 305 U. S. 32, 59 S. Ct. 3, 83

L. Ed. 26 (1938); *Williams* v. *North Carolina,* 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577 (1945); *Milliken* v. *Meyer,* 311 U. S. 457, 462, 61 S. Ct. 339, 342, 85 L. Ed. 278, 282-83 (1940); *Sistare* v. *Sistare,* 218 U. S. 1, 30 S. Ct. 682, 54 L. Ed. 905 (1910); *Yarborough* v. *Yarborough,* 290 U. S. 202, 54 S. Ct. 181, 78 L. Ed. 269 (1933).

## VIII. The Law.

The issue in this case is the enforcement of a sister state's in personam money judgment for accrued child support. The "Uniform Child Custody Jurisdiction Act," KRS 403.400-403.630, directed to when a Kentucky Court should assume jurisdiction in child custody cases, has no application. Nor does *McCormick* v. *McCormick,* Ky., 623 S. W. 2d 909 (1981), cited by the majority as authority for refusing to enforce the Illinois decree. *McCormick* was not a collection case. In *McCormick,* the Mother sought to *modify* an award of child support specified in a *Kentucky* decree long after both parties had moved out of this state. The Kentucky Supreme Court declined to assume jurisdiction.

*McCormick* states as page 910:

> "While there is no comparable statute governing child support, the factors set forth in the child-custody statute, KRS 403.420, offer instructive *guidelines* for determining this state's interest in assuming jurisdiction." (Emphasis added).

The concept of using the Uniform Child Custody Jurisdiction Act as a guideline in deciding whether the Kentucky Supreme Court should continue jurisdiction to make changes in a divorce decree after all the interested parties have left the state certainly has no application to the present case where the Supreme Court of Kentucky was

simply asked to enforce the money judgment of a sister state. This is a collection procedure brought in Kentucky against the wages and property of the respondent because he is employed there.

The only other case cited by the majority is *Brengle* v. *Hurst*, 408 S. W. 2d 418 (1966). But in *Brengle* the children were Kentucky residents, the issue was modification of custody with change of circumstances, and the question was whether to afford Full Faith and Credit to an Indiana decree entered *without in personam jurisdiction* of the Mother and Child. The differences between *Brengle*, where the children were bona fide residents of Kentucky and the foreign decree was entered *in the absence of in personam jurisdiction* and the present case are both obvious and critical. The Uniform Child Custody Jurisdiction Act simply clarifies those differences.

The only other authority cited by the Court was Restatement (2d) Conflict of Laws §103 (1971). This Restatement section is totally inappropriate because the only U. S. Supreme Court precedent cited by the draftsmen was the dissenting opinion of Justice Stone in *Yarborough* v. *Yarborough*, 290 U. S. 202 (1933). This flies in the face of the United States Supreme Court's *majority decision* in *Yarborough, supra*, a controlling case apparently overlooked by the Kentucky Supreme Court.

The subject-matter jurisdiction of the Illinois Court is not subject to collateral or appellate attack by the sister state Kentucky when (1) *there is in personam jurisdiction* in Illinois; (2) *the parties appeared by counsel and in person;* and (3) *the subject matter of Illinois jurisdiction was contested and fully litigated* both at the trial level and the Appellate level in Illinois. *Davis* v. *Davis*, 305 U. S. 32, 59 S. Ct. 3, 83 L. Ed. 26 (1938); *Sherrer* v. *Sherrer*, 334

U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 2d 1429 (1948); *Coe* v. *Coe,* 334 U. S. 378, 68 S. Ct. 1094, 92 L. Ed. 1451 (1948); *Williams* v. *North Carolina,* 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577 (1945).

The decision in this case was based on findings of fact as to the merits of the controversy. But the questions of whether the children qualified under the existing Illinois standards of jurisdiction, (significant connection, child abuse and the emergency doctrine) whether Alexia was abducted from the Father's custody, who would be the better custodial parent, and what is the appropriate amount of child support, were the subject matters of Illinois jurisdiction, where the case was contested and litigated to the Illinois Court of Last Resort. The Full Faith and Credit Clause of the Constitution *precludes any inquiry into the merits of the cause of the action,* the *logic or consistency of the decision,* or the *validity of the legal principles* on which the judgment is based. *Milliken* v. *Meyer,* 311 U. S. 457, 462, 61 S. Ct. 339, 342, 85 L. Ed. 278, 282-83 (1940). The Illinois findings regarding the subject matter is not subject to collateral attack in Kentucky. So the findings of a Kentucky court regarding the merits of the controversy are irrelevant. The United States Supreme Court has ruled that accrued child support judgments are entitled to mandatory Full Faith and Credit as a matter of law. *Sistare* v. *Sistare,* 218 U. S. 1, 30 S. Ct. 682, 54 L. Ed. 905 (1910); *Yarborough* v. *Yarborough,* 290 U. S. 202, 54 S. Ct. 181, 78 L. Ed. 269 (1933).

To allow the Kentucky Supreme Court Opinion to stand would be to allow the Kentucky Supreme Court to disregard the Full Faith and Credit Clause of the U. S. Constitution and rule contrary to the long standing, controlling

U. S. Supreme Court Opinions herein cited as to Full Faith and Credit between sister states.

## CONCLUSION

Petitioner requests a Writ of Certiorari be granted and a summary disposition by this Court reversing the decision of the Kentucky Supreme Court.

Respectfully submitted,

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# APPENDIX

## APPENDIX A

# SUPREME COURT OF KENTUCKY

**82-SC-571-DG**

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SHIRLEY MCGAUGHEY, a/k/a SHIRLEY ZIGORIS and GUY E. MCGAUGHEY, JR. - - - - - *Movants*

*v.*

MARK ZIGORIS - - - - - - - *Respondent*

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*On Review from the Court of Appeals*
*80-CA-1516-MR*
*(Jefferson Circuit Court No. 80-CI-06056)*

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**ORDER DENYING PETITION FOR REHEARING**

Movants' petition for rehearing is denied.

Leibson, J., dissents.

ENTERED August 31, 1983.

(s) Robert F. Stephens
Chief Justice

## APPENDIX B

RENDERED: MAY 11, 1983
NOT TO BE PUBLISHED

# SUPREME COURT OF KENTUCKY

**No. 82-SC-571-DG**

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SHIRLEY ZIGORIS (NOW MCGAUGHEY) and
GUY E. MCGAUGHEY, JR. - - - - - *Movants*

v.

MARK ZIGORIS - - - - - - - *Respondent*

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*On Review from the Court of Appeals*
*No. 81-CA-1891-MR*
*(Jefferson Circuit Court No. 80-CI-06056)*

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## MEMORANDUM OPINION OF THE COURT AFFIRMING

Movant/wife and respondent/husband were married in Youngstown, Ohio, on May 26, 1963, and parented three children. They were divorced in Indiana in 1970, the husband being awarded custody of all the children. Following the divorce, the mother remarried and again divorced and both parties moved to Kentucky. In 1973, movant applied to the Jefferson Circuit Court for a change of custody and, after a complete hearing, with both parties present and represenated by counsel, the change was denied. Some time later, movant married her present husband and the couple moved to Florida. At some point in early 1978, Andre Zigoris, one of the children, was permitted to go with his mother, and in March of 1978 the other two children were allowed to visit her during spring vacation. How-

ever, neither Andre nor his sister was returned to the father and, in April, 1978, after extensive investigation and despite the best efforts of the mother to hide herself and her daughter, Alexia, the respondent located them and Alexia returned to Indiana with her father.

The movant sought a change of custody on an emergency situation in Indiana, which was denied; and, one week after the return of Alexia, the wife took her from her school and returned her to Florida. The father, having previously petitioned the Florida court for enforcement of the Indiana divorce judgment and the Kentucky order, both of which granted him custody, again sought the help of that court in locating both Alexia and Andre, and finally a hearing was held on June 26, 1978. The Florida court found that the movant was still hiding but was represented by counsel and by her husband, who was also an attorney. The Florida record disclosed that the husband stated that he did not know his wife's whereabouts or the whereabouts of the children. At the hearing, the Florida court upheld Dr. Zigoris, ratified the Indiana judgment and Kentucky order and stated they were entitled to recognition and enforcement as if entered in Florida, again awarding custody to the respondent. A judgment was also entered against the movant for about $5,400 to defray costs of investigation, travel expense and attorneys' fees incurred by the respondent.

About three days after the hearing in Florida, the movant, represented by her husband, secured an order from an Illinois court at her husband's former home town, where his family had practiced law since 1895, awarding her custody of Andre and Alexia. She further applied for support for these children in a hearing in which she alleged, and in fact still alleges before this court, that in 1979 the movant, *and* Alexia, *and* Andre had been continuous residents of Illinois for the four years next preceding the

application. To say the least, this flies in the face of the findings of the Florida court, which had held that they had been in the custody of the father until some point early in 1978. On April 22, 1980, the Illinois Circuit Court entered an order finding that the movant had, in fact, obtained custody of these children for 28 months and 25 months, and ordered the respondent to pay $42,400 in the "past temporary child support" and $800 per child, or $1,600 per month, in future child support. Thereupon, movant sought enforcement of this support order in the Jefferson Circuit Court, which court refused to enforce the judgment. The refusal was affirmed by the Court of Appeals, which decision we hereby affirm.

We adopt the language of the Court of Appeals by Judge Wilhoit as follows: ". . . the Kentucky Uniform Child Custody Jurisdiction Act, KRS 403.400 to 403.620, is determinative of the outcome of this action . . .

"KRS 403.250 provides, in relevant part:

> "The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had *assumed jurisdiction under statutory provisions substantially in accordance* with KRS 403.420 to 403.620[.]

(Emphasis added.) The commissioners' note to this section (§ 13) of the Uniform Act is illuminating: "'Jurisdiction' . . . under this section refers . . . to the requirements of sections 3 [KRS 403.420] and 14 [KRS 403.530] in the case of modification decrees." 9 *Uniform Laws Annotated* 151 (1979). The [movants] have introduced what they allege to be the Illinois statutes in effect at the time of modification, and the appellee has not asserted that these statutes were not then in force. The [movants'] argument that the former Illinois statutes were substantially in accordance with Kentucky's statutes at

the time of the decree is irrelevant; KRS 403.520 speaks of being "substantially in accordance with KRS 403.420 to 403.620[,]" not of being substantially in accordance with KRS 403.260, the prior jurisdictional statute which was but one part of the Uniform Act and which was repealed with the adoption of the entirety of the Act. *See* 1980 Ky. Act. ch. 69, §25. Even if the Illinois statute in question may be read to be substantially in accordance with section 3 of the Act (KRS 403.420), as argued by the [movants], it certainly contains none of the provisions of section 14 (KRS 403.530), as required by the comment quoted above. Thus, courts of this Commonwealth are not *required* by the Act to give full faith and credit to the Illinois modification decree.

"The commissioners' note to section 13 of the Act also states that "[t]he section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance." 9 *Uniform Laws Annotated* 151 (1978). We believe to enforce the Illinois decree, however, would run contrary to the very purposes for which the Uniform Act was enacted. The Legislature has declared it to be the public policy of this Commonwealth to:

> "Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
>
> "Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available [; and]

"Deter abductions and other unilateral removals of children undertaken to obtain custody awards[.]

KRS 403.400(1)(a), (c), and (e).

"To recognize and enforce the Illinois custody modification with the resultant arrearage order would be violative of the expressed purposes of Kentucky law and would make the courts of this Commonwealth an instrument in encouraging conduct which the Legislature has sought to inhibit. Full faith and credit is not required to be given to do so "would involve an improper interference with important interests" of the state from which recognition and enforcement is sought. Restatement (Second) of Conflict of Laws §103 (1971). *See Brengle* v. *Hurst*, Ky., 408 S. W. 2d 418 (1966)."

Movant here argues that she is not appealing from the custody modification but is appealing from the money judgment entered by the Illinois Circuit Court and that she is thus entitled to full faith and credit on that basis. It is our opinion that *McCormick* v. *McCormick*, Ky., 623 S. W. 2d 909, 910 (1981), is dispositive of this case, when it is stated:

> The jurisdictional requirements of KRS 403.420 were enacted to remedy a particularly odious practice unique to the area of child custody. However, in the interest of common sense the same factors must be considered in determining whether this state's courts should exercise jurisdiction in an action for modification of child support.

It goes without saying that in the absence of custody support is not granted.

The judgment is affirmed.

Stephens , C.J., and Aker, Gant, Stephenson and Wintersheimer, JJ., concur. Leibson, J., dissents by separate

dissenting opinion. Vance, J., joins in his dissent.

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## APPENDIX C

# SUPREME COURT OF KENTUCKY

**82-SC-571-DG**

---

SHIRLEY ZIGORIS (NOW MCGAUGHEY)
GUY E. MCGAUGHEY, JR. - - - - - *Movants*

v.

MARK ZIGORIS - - - - - - - *Respondent*

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*On Review from the Court of Appeals*
*No. 81-CA-1891-MR*
*(Jefferson Circuit Court No. 80-CI-06056)*

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## DISSENTING OPINION BY JUDGE LEIBSON

The issue in this case is the enforcement of a sister state's *en personam* money judgment for accrued child support. The "Uniform Child Custody Jurisdiction Act," KRS 403.400-403.630, directed to when this Court should assume jurisdiction in child custody cases, has no application. Nor does *McCormick* v. *McCormick,* Ky., 623 S. W. 2d 909 (1981), cited by the majority as authority for refusing to enforce the Illinois decree. *McCormick* was not a collection case. In *McCormick,* the mother sought to *modify* an award of child support specified in a *Kentucky* decree long after both parties had moved out of this state. We declined to assume jurisdiction.

*McCormick* states at page 910:

> "While there is no comparable statute governing child support, the factors set forth in the child-custody statute, KRS 403.420, offer instructive *guidelines* for

determining this state's interest in assuming jurisdiction." (Emphasis added).

The concept of using the Uniform Child Custody Jurisdiction Act as a guideline in deciding whether the Court should continue jurisdiction to make changes in a divorce decree after all the interested parties have left the state certainly has no application to the present case where we are simply asked to enforce the money judgment of a sister state. This is a collection procedure brought in Kentucky against the wages and property of the respondent because he is employed here. Cf. *Hamilton* v. *Hamilton,* Ky., 476 S. W. 2d 197 (1972).

According to the language of KRS 403.400, the purposes of the act are to "avoid jurisdictional competition and conflict of other states, assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection, avoid re-litigation of custody decisions of other states in this state, facilitate the enforcement of custody decrees of other states," etc. Even if we were to use this Act as a guideline, the better reasoning is not that this Court should decline to afford full faith and credit to the Illinois decree. This Court should decline to assume jurisdiction to look into the merits of a controversy where the mother and children live in Illinois and the father lives in Indiana.

The only other case cited by the majority is *Brengle* v. *Hurst,* Ky., 408 S. W. 2d 418 (1966). But in *Brengle* the children were Kentucky residents, the issue was modification of custody with change of circumstances, and the question was whether to afford full faith and credit to an Indiana decree entered *without in personam* jurisdiction of the mother and child. The differences between *Brengle,* where the children was bona fide residents of this state and the foreign decree was entered in the absence of *in personam* jurisdiction, and the present case are both ob-

vious and critical. The Uniform Child Custody Act simply clarifies those differences.

The decision in this case was based on findings of fact as to the merits of the controversy. But the questions of whether the children were abducted from the father's custody, who would be the better custodial parent, and what is the appropriate amount of child support, were the subject matters of Illinois jurisdiction, where the case was contested and litigated. The fullf aith and credit clause of the Constitution precludes any inquiry into the merits of the cause of the action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. *Milliken* v. *Meyer,* 311 U. S. 457, 61 S. Ct. 39, 85 L. Ed. 278 (1940). There is evidence both supporting and contradicting some of the more salient facts as stated in the majority opinion. But the Illinois findings regarding the subject matter is not subject to collateral attack in Kentucky. So the findings of a Kentucky court regarding the merits of the controversy are irrelevant. The United States Supreme Court has ruled that accrued child support judgments are entitled to mandatory full faith and credit as a matter of law. *Sistare* v. *Sistare,* 218 U. S. 1, 30 S. Ct. 682, 54 L. Ed. 905 (1910); *Yarborough* v. *Yarborough,* 290 U. S. 202, 54 S. Ct. 181, 78 L. Ed. 269 (1933).

I would reverse.

Vance, J., joins in this dissent.

## APPENDIX D

# COURT OF APPEALS OF KENTUCKY

**No. 81-CA-1891-MR**

---

SHIRLEY MCGAUGHEY, ETC. - - - *Appellants*

*v.*

MARK ZIGORIS - - - - - - - - *Appellee*

---

*Appeal from Jefferson Circuit Court*
*Honorable Richard C. Oldham, Judge*
*Civil Claim No. 80-CI-06056*

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## ORDER DENYING PETITION FOR REHEARING

BEFORE: HOWARD, LESTER and WILHOIT, Judges.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

(s) Charles B. Lester
Judge, Court of Appeals

ENTERED: JUNE 25, 1982

## APPENDIX E

**OPINION RENDERED: APRIL 16, 1982; 2:00 P.M.**
**NOT TO BE PUBLISHED**

# COURT OF APPEALS OF KENTUCKY

**81-CA-1891-MR**

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SHIRLEY MCGAUGHEY, Also Known as
Shirley Zigoris, and
GUY E. MCGAUGHEY, JR. - - - - - *Appellants*

*v.*

MARK ZIGORIS - - - - - - - - - *Appellee*

---

*Appeal from Jefferson Circuit Court*
*Honorable Richard C. Oldham, Judge*
*Civil Action No. 80-CI-06156*

---

**AFFIRMING**

BEFORE: HOWARD, LESTER, and WILHOIT, Judges.

WILHOIT, JUDGE. The Jefferson Circuit Court has declined to give full faith and credit to an order of an Illinois circuit court relating to an arrearage in child support determined to be due by that court to Shirley McGaughey from her former husband, Mark Zigoris.[1] The sole question before this Court is whether the circuit court erred in failing to enforce the foreign judgment. We hold that it did not and affirm its judgment.

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[1]The order, dated April 22, 1980, required Dr. Zigoris to pay Shirley McGaughey $22,400.00 and $20,000.00 for past temporary support of two children through April 1980; $7,469.80 for medical expenses already incurred; and $1,500.00 for temporary attorney's fees.

None of the parties to this appeal is a Kentucky domiciliary. The only prior contact that the courts of this Commonwealth have had with the parties and their three children was an action by Mrs. McGaughey for transfer of custody to her, which resulted in an order in 1973 leaving custody with Dr. Zigoris, where it had been placed by an Indiana court at the time of the divorce in 1970. In June, 1973, Dr. Zigoris and the children moved back to Indiana from Kentucky; he continues to reside there but is employed in Kentucky.

On February 8, 1979, an Illinois court of general jurisdiction entered an order granting temporary custody of two of the Zigoris children to their mother, pendente lite.[2] We agree with the circuit judge that there is no jurisdictional basis for a Kentucky court to enter any order concerning custody of these children. This determination in no way reflects, howver, any condoning by this Court of the home environment alleged to have been provided by Dr. Zigoris for his children or of Mrs. McGaughey's disregard for proper legal channels by resorting to child-snatching and forum-shopping in order to secure her desired ends, however meritorious they might be. A more detailed recitation of the conduct of the parties is unnecessary to our decision.

We share the circuit Judge's belief that the Kentucky Uniform Child Custody Jurisdiction Act, KRS 403.400 to 403.620, is determinative of the outcome of this action but differ from his reasoning in reaching the same result. Since Illinois did not have the Act at the time of the cus-

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[2]Although this order recites that trial was set for February 20, 1979, the appellants have not included in the record a copy of any order granting permanent custody to Mrs. McGaughey; the docket sheets filed in the record do not show that any such order has been entered. We also find no order giving rise to the support obligation on which the April 22, 1980 order for temporary relief was predicated.

tody modification, an analysis of what it should have done under the Act provides an inappropriate basis, it seems to us, for denying full faith and credit. We look instead to the express provisions of the Act as they relate to recognition of out-of-state decrees.

KRS 403.520 provides, in relevant part:

> The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had *assumed jurisdiction under statutory provisions substantially in accordance* with KRS 403.420 to 403.620[.]

(Emphasis added.) The commissioners' note to this section (§ 13) of the Uniform Act is illuminating: " 'Jurisdiction' . . . under this section refers . . . to the requirements of sections 3 [KRS 403.420] and 14 [KRS 403.530] in the case of modification decrees." 9 *Uniform Laws Annotated* 151 (1979). The appellants have introduced what they allege to be the Illinois statutes in effect at the time of the modification, and the appellee has not asserted that these statutes were not then in force. The appellants' argument that the former Illinois statutes were substantially in accordance with Kentucky's statute at the time of the decree is irrelevant; KRS 403.520 speaks of being "substantially in accordance with KRS 403.420 to 403.620[,]" not of being substantially in accordance with KRS 403.260, the prior jurisdictional statute which was but one part of the Uniform Act and which was repealed with the adoption of the entirety of the Act. *See* 1980 Ky. Acts ch. 69, § 25. Even if the Illinois statute in question may be read to be substantially in accordance with section 3 of the Act (KRS 403.420), as argued by the appellants, it certainly contains none of the provisions of section 14 (KRS 403.530), as required by the comment quoted above. Thus, courts of this Commonwealth are not *required* by the Act

to give full faith and credit to the Illinois modification decree.

The commissioners' note to section 13 of the Act also states that "[t]he section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance." 9 *Uniform Laws Annotated* 151 (1979). We believe to enforce the Illinois decree, however, would run contrary to the very purposes for which the Uniform Act was enacted. The Legislature has declared it to be the public policy of this Commonwealth to:

> Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
>
> Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available [; and]
>
> Deter abductions and other unilateral removals of children undertaken to obtain custody awards[.]

KRS 403.400(1)(a), (c), & (e). Even though we do not question the sincerity of Mrs. McGaughey's actions, we are unwilling to assume that the courts of our sister state of Indiana are any less competent or willing to make custody modifications when the best interests of the children involved require this action than are the courts of the state of Illinois. The Zigoris children were Indiana domiciliaries at the time of their removal to Illinois; they had lived in Indiana for a number of years and were originally placed in their father's custody by a court of that state. There is no indication that Indiana no longer retained jurisdic-

tion or that it had declined to assume jurisdiction to modify its own decree. *See* KRS 403.530(1). Indeed, during the pendency of the Illinois proceedings, Dr. Zigoris sought a contempt order against Mrs. McGaughey, and such relief was granted by an Indiana court.

To recognize and enforce the Illinois custody modification with the resultant arrearage order would be violative of the expressed purposes of Kentucky law and would make the courts of this Commonwealth an instrument in encouraging conduct which the Legislature has sought to inhibit. Full faith and credit is not required to be given when to do so "would involve an improper interference with important interests" of the state from which recognition and enforcement is sought. Restatement (Second) of Conflict of Laws § 103 (1971). *See Brengle* v. *Hurst,* Ky., 408 S. W. 2d 418 (1966).

For that reason, we affirm the judgment of the circuit court.

ALL CONCUR.

Attorneys for Appellants:

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Post Office Box 380
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Attorneys for Appellee:

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## APPENDIX F

# JEFFERSON CIRCUIT COURT

SECOND DIVISION

**No. 80CI-06156**

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SHIRLEY ZIGORIS MCGAUGHEY, et al. - - *Petitioner*

*v.*

MARK ZIGORIS - - - - - - - *Respondent*

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## JUDGMENT

This action having come before the Court on the Petitioner's Motion to enforce an out of state Judgment, and the Respondent's Counter-Claim for possession and custody of the Parties' infant children, and the Court having heard the argument of Counsel, studied the Briefs filed herein on behalf of the respective Parties, and filed its Opinion herein dated April 13, 1981,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Petitioners' Complaint is hereby dismissed at their cost;

2. The Respondent's Counter-Claim is hereby dismissed at his cost;

3. The Opinion that the Court has entered dated April 3, 1981, is hereby incorporated into this Judgment as though fully set out herein; and

4. This is a final and appealable Order of Court.

**(s) Oldham**
**Judge**

**Date**

Tendered By:

(s) Joseph V. Mobley
Attorney for Respondent
Mobley, Zoeller & Celebrezze
614 Kentucky Home Life Bldg.
Louisville, KY 40202
Phone: 583-4816

## APPENDIX G

# JEFFERSON CIRCUIT COURT

DIVISION TWO

No. 81CI-06156

---

SHIRLEY ZIGORIS MCGAUGHEY, et al. - - *Petitioner*

*v.*

MARK ZIGORIS - - - - - - - *Respondent*

---

## OPINION

Shirley Zigoris, now McGaughey, asks this Court to enforce an Illinois judgment for child support against her former husband, Mark Zigoris.

Mark challenges the jurisdiction of the Illinois Court to enter a personal judgment against him, charges that Shirley's possession of two of his three children is in defiance of previous judgments in Indiana, Kentucky and Florida, and asks that custody be restored to him.

Shirley denies this Court's jurisdiction to order the children returned to Mark.

The Court concludes that Shirley cannot take the children to another state in defiance of existing Court orders, and there secure orders and judgments against Mark which are enforcible in Kentucky.

A discussion of the factual and procedural background is essential to an understanding of the present problem.

Mark and Shirley were divorced in Indiana in 1970, Shirley agreed for good reasons that Mark would have custody of their three children, Dean, 7, Andre, 6, and Alexia, 4.

After the divorce, both parties moved to Louisville, Kentucky, and in January 1973, in response to a request for custody of the children by Shirley, the Kentucky Court entered judgment refusing to change custody. The Court found that Mark Zigoris, a dentist, was taking good care of the children, and, though not remarried, had employed a mature woman as full-time housekeeper and baby sitter.

Shirley, on the other hand, had had emotional problems, married and divorced a second husband, and was keeping company with a third man. She saw her children often, was on good terms with her former husbands, and the Court saw no reason to upset the situation. Shirley remained in Louisville, and Mark and the children moved across the river to Jeffersonville, Indiana.

Matters followed a placid course until December of 1977 when Andre Zigoris, now 13, overdosed on Valium and beer and nearly killed himself. Mark agrees that Andre was temporarily turned over to Shirley, who claims the change was permanent. Suffice it to say no court order was entered affecting Andre's status.

Shirley married Guy McGaughey, her attorney, in January 1978, and moved to Florida with Andre and her new husband. This was a change of residence, not just a vacation. At spring break, by agreement, Dean and Alexia, the other two children, visited their mother in Florida. They were to return on March 28, 1978, but only Dean came back, Shirley refusing to return Andre and Alexia.

Shirley filed for change of custody in Florida in April 1978. Mark asked the Court to order his children returned and asked for enforcement of the existing custody orders of the Indiana and Kentucky courts. In a complicated series of events not necessary to detail here, Shirley did a number of things detrimental to her cause, including snatching Alexia out of school in Indiana, defying the Florida Court and threatening to take the children out of the United

States. England was her home originally, so the threat was not groundless.

The Florida Court held various hearings where Shirley was represented by counsel, but she did not appear. Guy McGaughey, her husband, was present but denied knowing her whereabouts.

The Florida Court recognized the Indiana and Kentucky judgments as enforcible in Florida, and awarded custody of the three children to Mark, ordering the Sheriff to physically deliver the children to him, and ordering Shirley to pay Mark's attorney fees and travel expenses.

Shirley contends that Mark is the cause of Andre's involvement with drugs, and her position since Andre's overdose has been that her children are in danger of serious harm when they're with their father, but this issue was raised before the Florida Court, and she was denied emergency custody of Andre and Alexia. Emergency relief was also sought and refused in Indiana, and when the Court denied Shirley temporary custody, Shirley picked Alexia up after school and left the state. The actions of the parties in Florida are detailed in the Final Judgment of *Zigoris* v. *McGaughey* in the Circuit Court for Brevard County, Florida, a transcript of which is a part of this record.

The Florida Court made a specific finding that Alexia and Andre Zigoris were taken from the state to avoid enforcement of orders of the Florida Court concerning their custody.

With this background, and only three days after a hearing in Florida where Shirley did not appear (but was represented by counsel), Shirley, represented by her husband, secured an order of an Illinois Court at Lawrenceville, giving her custody of Andre and Alexia. Lawrenceville is Guy McGaughey's old home town. In the hearing at Lawrenceville on June 29, 1978, he told the Court that from

Florida Shirley had come to his mother in Lawrenceville, had been there two months and had applied to buy a house. Yet on May 10, 1978, Guy McGaughey had told the Florida Court he was unaware of his wife's location. Mr. McGaughey is an officer of the Court. Is it possible for both of these statements to be true?

The Court would welcome a detailed explanation filed in the record.

Under the circumstances of this case The Illinois Court should not have accepted jurisdiction, and the Courts of other states should not enforce the Illinois Court's decrees.

KRS 403.420 states:

> The Courts of this state shall recognize and enforce an initial or modification decree of another state which had assumed jurisdiction under statutory provisions *substantially in accordance* with KRS 403.420 to 403.-620.

KRS 403.470(2) reads:

> Unless required in the interest of the child, the Court shall not exercise its jurisdiction to modify a custody decree of another state *if the petitioner,* without consent of the person entitled to custody, *has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody.* If the petitioner has violated any other provision of a custody decree of another state, the Court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

Illinois has a similar statute. ***Illinois should have declined to enter any orders with reference to the Zigoris children.***

Mrs. Zigoris and her husband, Mr. McGaughey, have persuaded the Illinois Court that a grave crisis existed, and that her children would suffer irreparable injury if that court did not act. But the Florida Court listened to this same argument and decided that no such emergency existed. On April 11, 1978, the Indiana Court also heard the evidence which was the basis for Mrs. Zigoris' claim that the circumstances warranted her keeping Andre and Alexia in defiance of the Indiana order. The Court decided no emergency existed, found Mrs. Zigoris in contempt of Court, and ordered the children returned to their father.

So when the Illinois Court entered orders favorable to Mrs. Zigoris, it assumed jurisdiction in behalf of a person who had defied the decrees of Indiana, Kentucky and Florida, in all of which states she had voluntarily appeared and had an opportunity to be heard.

Obviously this Court has no control over the courts of the State of Illinois, but under these circumstances this Court is not obligated to give full faith and credit to the orders of the Illinois Court, and it declines to do so.

The Petition of Shirley Zigoris McGaughey that the order of the Circuit Court of the Second Judicial Circuit, Lawrence County, Illinois, dated April 22, 1980, for the payment of various sums of money from Mark Zigoris to Shirley Zigoris McGaughey is denied.

But Mark Zigoris is a resident of Indiana and has lived there for a number of years. His oldest child is with him. The two younger children are with their mother in Lawrence County, Illinois. Under these circumstances, there is no jurisdictional basis for this Court to enter any order concerning custody of these children.

(s) Oldham
Richard C. Oldham, Judge
Dated: April 3, 1981

cc: Mr. Jerry L. Ulrich
Attorney for Petitioner

Mr. Joseph V. Mobley
Attorney for Respondent

Mr. Guy E. McGaughey, Jr.

## APPENDIX H

IN THE CIRCUIT COURT

## SECOND JUDICIAL CIRCUIT

LAWRENCE COUNTY, ILLINOIS

Consolidated

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No. 78-MR-2

SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS - *Plaintiff*

*v.*

MARK ZIGORIS - - - - - - - *Defendant*

No. 78-MR-5

MARK ZIGORIS - - - - - - - - *Plaintiff*

*v.*

GUY E. MCGAUGHEY, JR., and
SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS - *Defendants*

---

**ORDER FOR TEMPORARY RELIEF**—Filed
April 22, 1980

This matter came before the Court on Plaintiff Shirley McGaughey's petition, supported by affidavit, for temporary relief.

Plaintiff was represented by Counsel. Neither Defendant nor Defendant's Counsel were present. Notice of this hearing was given by the Clerk of this Court to Defendant's Counsel under date of March 12, 1980. Plaintiff's Counsel, Guy E. McGaughey, Jr., represents to the Court that he called Mr. Wiseman, Defendant's Counsel, last evening and that Mr. Wiseman told Mr. McGaughey that the Defendant had been notified and that his Kentucky Coun-

sel, Mr. Mobley, had been notified of this hearing, that Mr. Wiseman would not be present and that he had heard nothing from the Defendant.

The Court has heard the evidence and is fully advised in the premises.

The Court has considered the verified pleadings.

It Is Ordered:

1. Defendant Mark Zigoris shall, on or before 30 days from the date hereof pay to the Plaintiff, Shirley McGaughey $22,400.00, said sum being equal to 28 months times $800.00 for past temporary child support of Andre Zigoris through April 1980. Said payment of $22,400.00 to be paid by Mark Zigoris to the Clerk of this Court who shall thereafter remit same to Shirley McGaughey.

2. Defendant Mark Zigoris shall, on or before 30 days from the date hereof, pay to the Plaintiff, Shirley McGaughey, $20,000.00, said sum being equal to 25 months times $800.00 for past temporary child support of Alexia Zigoris through April 1980. Said payment of $20,000.00 to be paid by Mark Zigoris to the Clerk of this Court who shall thereafter remit same to Shirley McGaughey.

3. Defendant shall pay to the Clerk of the Court the sum of $7,469.80 who shall then remit same to the Fairview Community Hospital in Minneapolis, Minnesota for the medical expenses of Andre Zigoris already incurred.

4. Defendant Mark Zigoris shall pay to Shirley McGaughey on account of her temporary attorney's fees the sum of $1,500.00.

5. Defendant Mark Zigoris shall pay to the Clerk of the Court the sum of $800.00 per month for temporary child support of Alexia Zigoris, said payment to commence on the first day of May 1980 and continue to be paid on the first day of each month thereafter during the minority of Alexia Zigoris, or until further order of this Court. The Clerk shall remit same to the Plaintiff, Shirley McGaughey.

6. Defendant Mark Zigoris shall pay to the Clerk of the Court the sum of $800.00 per month for temporary child support of Andre Zigoris, said payment to commence on the first day of May 1980 and continue to be paid on the first day of each month thereafter during the minority of Andre Zigoris, or until further order of this Court. The Clerk shall remit same to the Plaintiff, Shirley McGaughey.

Enter: (s) Robert W, Whitmer
Judge

Dated: April 22, 1980

## APPENDIX I

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE

# SECOND JUDICIAL CIRCUIT

LAWRENCE COUNTY

**Consolidated**

---

**No. 78-MR-2**

SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS, - *Plaintiff,*

*v.*

MARK ZIGORIS, - - - - - - - *Defendant,*

AND

**No. 78-MR-5**

MARK ZIGORIS, - - - - - - - *Plaintiff,*

*v.*

GUY E. MCGAUGHEY, JR., and
SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS, - *Defendants.*

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## PETITION FOR TEMPORARY SUPPORT

Your Petitioner, Shirley Zigoris McGaughey, Plaintiff in the above named Consolidated cause, by counsel, McGaughey & McGaughey, respectfully represents:

1. On June 7, 1978, the Plaintiff filed a Petition herein for Writ of Habeas Corpus; and on June 29, 1978, at a hearing before Judge Robert Hill, the Court issued a temporary restraining order dated June 29, 1978, effective 5:47 P.M. to, continue for a period of ten (10) days which, in effect, made the maintenance of the custody of the children in the Plaintiff pending a further determination of this

matter reciting that the circumstances required that this be done in this particular manner for the best interests of the children, Andre Zigoris and Alexia Zigoris. The Petition was amended, by leave of Court to be a Petition for Modification of a Foreign Divorce Decree requesting custody be awarded to the Plaintiff, the mother, rather than the Defendant, the father.

2. On February 8, 1979, Judge Robert Whitmer entered an order granting temporary custody of Andre Zigoris and Alexia Zigoris pendente lite to the Plaintiff. The father appealed this to the Appellate Court which appeal was ultimately dismissed by the Appellate Court.

3. The Father's attorney, Mr. Robert Douglas, has formally withdrawn from the case and an order in respect thereto has been entered by this Court.

4. Pursuant to a Court Order of Superior Court of Clark County entered in March, 1970, Alexia Zigoris and Andre Zigoris remained in the custody of the father until December, 1977, when it was discovered that the little boy, Andre, then 12 years old was becoming addicted to drugs made available to him by his father; whereupon, after an attempted suicide by the child, the child psychologist, Dr. Calley, ordered the child to be immediately given to the mother and requested that the child be taken completely from the father's environment. The father voluntarily and immediately consented to such an arrangement.

5. The Plaintiff moved Andre to Florida where she obtained a temporary custody award on May 8, 1978, both as to Andre and, the little girl, Alexia. Immediately thereafter, upon application by the father, another Florida Judge overruled and set aside this temporary custody award without a hearing and ordered the children delivered back to the father in Indiana. The mother left Florida with the little girl and moved to Illinois leaving the little

boy in the care of the stepfather in Florida until school was out whereupon the little boy moved to Illinois.

6. In December of 1977 when the father voluntarily relinquished custody of the little boy to the mother he promised to send money to the mother for Andre's support the next month. He continued to make empty promises each month thereafter using such excuses that "he needed money for installation for drapes in his new home," "that he was a little short of cash" and "that he would pick it up the next month." None of these promises have been kept to date.

7. That Plaintiff has allowed the Defendant father to visit the children in the Plaintiff's home in Lawrenceville, Illinois and at her expense a number of times has even taken both children to visit the father in Clarksville, Indiana.

8. Since December, 1977, Andre has been living with his mother and stepfather and since March of 1978, Alexia has been living with the Plaintiff and her stepfather. That the Plaintiff and stepfather have provided the sole and total support for both of these children.

9. That the Plaintiff has made demands upon the Defendant for funds to buy food, clothing and other necessaries for both of the children and each of them but the Defendant has steadfastly refused to provide such necessaries for either child.

10. That Defendant has spent large sums of money in employing attorneys rather than sending any money to his children so they could live and eat.

11. The Defendant owns a new home in Clarksville, Indiana, he has bought a new car, he is married again, and he has lavished his new bride with presents. He is in good health and a denist practicing both at the University of Louisville and is enjoying also a private practice on the side. It is believed that he makes in excess of Fifty Thou-

sand ($50,000.00) Dollars a year and is amply able to provide for said children during the pendency of this suit.

12. He has been requested to send copies of his tax returns for the last five (5) years, which he has agreed to do but has not.

WHEREFORE, Petitioner prays:

A) That the Defendant be required by a decree of this Court to pay weekly to the Clerk of this Court and by him to be paid to the Plaintiff a reasonable sum for support and maintenance of said two (2) children commencing with Andre in December of 1977 and Alexia in March of 1978. That the Court award back support as well as future support.

B) That the Plaintiff may have such other and further relief as equity may require.

Shirley McGaughey
By Counsel

Guy E. McGaughey, Jr.
McGaughey & McGaughey
McGaughey Bldg.—P. O. Box 380
Lawrenceville, Ill. 62439
Tele: (618) 943-2411

STATE OF ILLINOIS
COUNTY OF LAWRENCE } ss:

Shirley M. McGaughey, being first duly sworn, states that she has read the above Petition and the contents there of and that the contents therein are true and correct to the best of her knowledge and belief.

(s) Shirley McGaughey

Subscribed and sworn to before me a Notary Public in and for the County and state aforesaid by Shirley M. McGaughey on this the day of February, 1980.

(s) Guy E. McGaughey, Jr.
Notary Public

My Commission Expires: August 17, 1982

## CERTIFICATE OF SERVICE

I certify that I mailed a copy of the attached Notice and Petition to the Defendant, at his business address and his home address listed on the Notice and, out of courtesy, have mailed a copy of same to Mr. Wiseman, who has contacted me as suggested new counsel for the Defendant at Mr. Wiseman's address set forth on the Notice.

(s) Guy E. McGaughey, Jr.
McGaughey & McGaughey
McGaughey Bldg.—P.O. Box 380
Lawrenceville, Ill. 62439
Tele: (618) 943-2411

Date: 2/5/80

## APPENDIX J

STATE OF ILLINOIS

# APPELLATE COURT

FIFTH DISTRICT

**No. 78-MR-2 and 78-MR-5**
**No. 79-191**

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At a term of the APPELLATE COURT begun and held at Mt. Vernon, on the First Thursday the 1st day of February in the year of our Lord one thousand nine hundred and seventy-nine within and for the State of Illinois.

PRESENT: HON. CHARLES E. JONES, Justice; HON. JOHN M. KARNS, Justice; HON. PEYTON H. KUNCE, Justice; and WALTER T. SIMMONS, Clerk.

And afterwards, to wit: On the 27th day of June, in the year of our Lord one thousand nine hundred and seventy-nine, an order was made by said Court in words and figures following, to-wit:

SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS, - - - - - - - - *Plaintiff-Appellee,*

*v.*

MARK ZIGORIS, - - - - - *Defendant-Appellant.*

(CONSOLIDATED)

MARK ZIGORIS, - - - - - *Plaintiff-Appellant,*

*v.*

GUY E. MCGAUGHEY, JR., and SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS, - - - - - - *Defendants-Appellees.*

---

*Appeal From the Circuit Court of Lawrence County*
*No. 78-MR-2 and 78-MR-5*
*No. 79-191*

---

**ORDER**—Filed October 31, 1979

This cause coming to be heard on appellant's response to this Court's rule to show cause why the appeal should not be dismissed for failure to file an application for leave to appeal with the clerk of the appellate court pursuant to Supreme Court Rule 308 (b), and the Court being advised in the premises;

IT IS ORDERED that the appeal be dismissed for lack of jurisdiction pursuant to Supreme Court Rule 308 (b).
MORAN, P. J., and KASSERMAN, J., not participating.

I, WALTER T. SIMMONS, Clerk of the Appellate Court, within and for the Fifth District of the State of Illinois, DO HEREBY CERTIFY, that the foregoing is a true copy of the Final Order of said Appellate Court, in the above entitled cause of record in my office.

IN TESTIMONY WHEREOF I have set my hand and affixed the seal of the said Court at Mt. Vernon, this 30th day of October in the year of our LORD one thousand nine hundred and seventy-nine.

(s) Walter T. Simmons
Clerk of the Appellate Court

## APPENDIX K

IN THE CIRCUIT COURT

# SECOND JUDICIAL CIRCUIT

LAWRENCE COUNTY, ILLINOIS

**Consolidated**

---

**No. 78-MR-2**

SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS - *Plaintiff*

*v.*

MARK ZIGORIS - - - - - - - *Defendant*

**No. 78-MR-5**

MARK ZIGORIS - - - - - - - - *Plaintiff*

*v.*

GUY E. MCGAUGHEY, JR., and
SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS - *Defendants*

---

## ORDER FOR PERMISSION TO APPEAL

Now comes the Defendant by counsel on motion for permission to appeal an interlocutory order under Supreme Court Rule, Chapter 110A, 308, sub-section (a), and comes Plaintiff by counsel with objections thereto, and parties consent to decision of Court on written briefs and arguments and waive further oral arguments.

After examining all the pleadings, the affidavits and attachments on file in this cause and the written briefs and arguments of counsel, the Court finds and rules as follows:

1. That the Court has in personam jurisdiction of the parties.

2. That the Order involves a question of law as to which there is substantial ground for difference of opinion.

3. That an immediate appeal from the Order may materially advance the ultimate termination of the litigation.

4. That the question is whether or not this Court, based upon the file and record in this cause, has jurisdiction of the minor children of the parties hereto and the Respondent to proceed to a full and plenary hearing on the merits as to custody as is provided in Illinois Revised Statutes, Chapter 40, Sections 601(a)(2), 601(a)(3), 602 and 610.

The Trial Court hereby requests the Appellate Court to allow an appeal from the Order wherein this Court finds it has jurisdiction of the parties hereto and the subject matter hereof.

ENTERED this 25th day of April, A.D., 1979.

(s) Robert W. Whitmer
Judge

## APPENDIX L

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
## SECOND JUDICIAL CIRCUIT
LAWRENCE COUNTY, ILLINOIS
**Consolidated**

---

**No. 78-MR-2**

SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS - *Plaintiff*

*v.*

MARK ZIGORIS - - - - - - - - - *Defendant*

**No. 78-MR-5**

MARK ZIGORIS - - - - - - - - - *Plaintiff*

*v.*

GUY E. MCGAUGHEY, JR., and
SHIRLEY MCGAUGHEY, f/k/a SHIRLEY ZIGORIS - *Defendants*

---

**ORDER**—Filed February 9, 1979

Now comes Plaintiff for temporary custody of two minor children, Andre Zigoris and Alexia Zigoris, and comes the Defendant upon his Motion to Dismiss for lack of jurisdiction.

After examining all the pleadings, the affidavits and attachments on file in this case, and after hearing arguments of counsel, the Court finds and rules as follows:

1. Motion of Defendant to Dismiss is denied.

2. Temporary custody of Andre Zigoris and Alexia Zigoris pendente lite is granted to Plaintiff.

3. Trial is set for February 20, 1979, at 9:30 o'clock A.M.

4. There is no just reason to delay enforcement or appeal of this Order.

Entered this 8th day of February, 1979.

(s) Robert W. Whitmer
Judge

## APPENDIX M

IN THE

# SUPERIOR COURT FOR THE COUNTY OF CLARK

STATE OF INDIANA

**Cause No. 69-D-657**

---

MARK ZIGORIS - - - - - - *Plaintiff-Husband*

*v.*

SHIRLEY ZIGORIS - - - - - - *Defendant-Wife*

---

## TRANSCRIPT OF EVIDENCE AND PROCEEDINGS AT TRIAL

Appearances:

For the Plaintiff-Husband:

William M. Clary, Jr.
607 Watt Street
Jeffersonville, Indiana 47130

For the Defendant-Wife:

Guy E. McGaughey, Jr.
McGaughey Building
Lawrenceville, Illinois 62439

Gene M. Smith
212 West Riverside Drive
Jeffersonville, Indiana 47130

• • • • • • •

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ANDRE ZIGORIS, after first being duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

Questions by Guy E. McGaughey, Jr.:

Q. 1. What is your full name, Andre?

A. Andre Nicholas Zigoris.

Q. 2. Where are you living at the present time?

A. Lawrenceville, Illinois.

Q. 3. With whom?

A. My mother.

Q. 4. And who else?

A. Uh, Guy McGaughey.

Q. 5. And who else?

A. My sister Alexia.

Q. 6. Okay. You have a couple dogs?

A. Yes.

• • • • • • •

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Q. 10. Andre, uh, it's a question about, uh, your leaving home. Will you tell the Judge the circumstances under which, uh, you left home and went to live with your mother?

A. Well, it was when I took seven valiums and I just, something happened and I passed out in my room. And my friend who was with me, he took five. He got caught by his parents, and his father came over and talked to my father, and my Dad thought it was necessary to take me to a, let me see, a doctor, let me see, I can't; I don't know.

The Court: Psychiatrist?

A. No, uh . . .

The Court: Psychologist?

A. Psychologist. And the psychologist thought it was better for me to live with my mother.

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Q. 11. Did your father, uh, agree that you should go with your mother?

A. Yes, he did.

Q. 12. Were there any conditions, uh, that he made on, uh, you going?

A. Not that I know of.

• • • • • • • •

Q. 14. Andre, will you tell the Court in your own words, you recall October 31, 1976?

A. Yes, I do.

Q. 15. Why do you remember that date?

A. That date was my Dad's birthday and we had a break in.

Q. 16. Tell the Court what happened on that date.

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The Court: Just be quiet. I already know the answer. Put it in the record if you want.

A. Well, when we came into the house, uh . . .

The Court: Tell them what was found under the bed.

A. Okay, we walked into the room and the door was busted open and the drawers were pulled out and there was pills laying all over the rug. They were just probably vitamins and valiums but; and, uh,

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there was suitcases broken into.

Q. 17. What did you say and what did your father say?

A. He said, "Oh, no," and we looked and everything was torn out of his room while he was gone and he lost a ring.

Q. 18. What else did he lose?

A. Well, my friend said it was; they said it was more than a *pound of pot, marijuana.*

Q. 19. Now, uh, how long have you been smoking marijuana in your father's custody?

A. About three years.

Q. 20. Where did you get your marijuana?

A. My father.

• • • • • • • •

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Q. 26. Did your mother know that you were into the marijuana scene then?

A. No, she didn't.

Q. 27. Was it after the marijuana exposure that she decided to keep Alexia?

A. Yes, it was.

• • • • • • • •

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Q. 36. How come Alexia didn't come back?

A. Well, my Mom didn't think it was right for her to come back to this kind of environment, because she found out what happened to me and she didn't want it to happen to my sister.

Q. 37. You went in January and she went spring vacation?

A. Yes, she did.

The Court: Mr. Zigoris, did you agree to let Andre go live with them?

Mr. Zigoris: Yes I did.

• • • • • • • •

## APPENDIX N

STATE OF ILLINOIS
COUNTY OF LAWRENCE } ss.

**Case 78-MR2**

### AFFIDAVIT OF ANDRE ZIGORIS

The undersigned, Andre Zigoris, being first duly sworn on his oath deposes and says as follows:

1. I am a minor child of Mark Zigoris and Shirley Zigoris McGaughey. I am 13 years old and live with my mother, Shirley Zigoris McGaughey and my step-dad, Guy McGaughey, Jr.

2. I have lived with my mother since December last year when Dr. Tom Colley insisted I leave my father and his apartment and go to my mother. I took 7 valium and drank some beer causing me to pass out for a long period of time and became very sick.

3. During the past 4 years, my father brought pot into our home and left it around where I could get it, smoke it, and sell it to my friends, which I did very often.

4. He would keep it in his van, his cabinet, his filing cabinet, and in the bag he carries with him every day. He left roaches around the house and in the van all the time. I rolled some of them and smoked it.

5. October 31, 1976, my father's birthday, two boys from school broke in our apartment, stole my sister's diamond ring and a lot of marijuana from my father's bedroom. Later they were selling it at school and I told them I knew where they got it because my father cried when he found out it was gone. They gave me some and I smoked it.

6. Many times on the week-ends my father would come home high on the stuff after playing music at dances.

7. In February this year when I visited my father, I found some pot in my father's bag, took it and sold it to my friend, Wylie Womack.

8. My mother didn't know about any of this until March of this year when my brother and sister visited us in Florida. When she found out, she kept my sister who lives with us now.

9. I applied for Culver summer school and was rejected because of my use of my father's drugs when I lived with him.

10. My step father, Guy McGaughey, Jr., took me to meet the Superintendent of Culver, Mr. John Mars. My step-dad, my mother, and I talked to him into letting me go to Culver this summer, which my step-dad is paying. I start at Culver today for 7 weeks and I will have my house.

11. I have not used drugs since I have lived with my mom. She is very strict with me. My grades are much better and I am taking English composition, 8th grade Math, Diving, and Equitation classes at Culver this summer.

12. My dad has refused to send money for me since I have lived with mom. My step-dad has paid for everything including my husky dogs, Smokey and Bandit, which he bought me. My father even sold my motor bikes and kept the money. When I first went to Florida with my mom and step-dad, I left my dogs with my dad, who put them in a kennel. When my step-dad went to get them out, the vet wouldn't give them to my step-dad until he paid my dad's bad checks.

13. I prefer to live with my mom and my step-dad. I don't want to be with my father, Jason, our teen-age baby-sitter.

14. Everything I have said in this is true and my father knows it. It he denies it, he will be lying. I will take a lie detector test, but he won't.

(s) Andre Zigoris

Subscribed and sworn to before me, a notary public, in and for the county aforesaid, on this, the 27th day of June, 1978.

(s) Guy E. McGaughey, Jr.
Notary Public

## APPENDIX O

# JEFFERSON CIRCUIT COURT

SECOND DIVISION

No. 80-CI-06156

---

SHIRLEY ZIGORIS MCGAUGHEY,
GUY E. MCGAUGHEY, JR. - - - - - *Petitioners*

*v.*

MARK ZIGORIS - - - - - - - *Respondent*

---

## AFFIDAVIT OF ANDRE ZIGORIS age 15

STATE OF ILLINOIS
COUNTY OF LAWRENCE } ss.

The undersigned Andre Zigoris, being first duly sworn, upon his oath deposes and says as follows:

1. That I am the minor son of Mark Zigoris, father, and Shirley Zigoris McGaughey, mother.

2. I have lived in Illinois since May 1978, and was living in Illinois in the month of June, 1980. My home state has been Illinois since May, 1978.

3. My father moved me from Kentucky in the month of June, 1973, to Jeffersonville, Indiana.

4. I overdosed on Valium and beer in December, 1977, and was taken to Dr. Thomas Colley, a child phychologist in Louisville, Kentucky, who insisted that I go to live with my mother. I lived with my mother in Kentucky and Indiana for about a month after leaving my father and then we moved to Cape Canaveral, Florida, where I went to Roosevelt Elementary School, and stayed until the end of the school year in late May, 1978.

During the last month and a half, my father harassed me with private detectives who followed me to school, followed me home, watched while I played and made me very, very nervous.

6. I went to Culver Miiltary Academy in June, 1978, and spent the summer there, enjoying it very much. My father visited me there, but did not pay any part of the costs.

7. After Culver in the summer of 1978, I enrolled in Parkview Junior High School, Lawrenceville, Illinois, in the fall of 1978, graduated from the eighth grade, entered high school in the fall of 1979, and entered Lawrenceville High School again in the fall of 1980.

8. I have been going to the Presbyterian Church since I have been in Lawrenceville, and have attended a number of Alcoholics Anonymous meetings, which are for chemically dependent persons such as myself.

9. When I first came back to Lawrenceville, I lived at my stepgrandmother's at 913 East State Street, Lawrenceville, Illinois, and then in August, 1978, I moved to our home at Rural Route 1, Lawrenceville, Illinois.

10. I have my own room, my three Husky dogs, my motorbikes, and live in a nice home which is situated on 5 acres with lots of trees, squirrels, rabbits, birds and a goat. I hunt and fish a lot.

11. In September 1979, my mother took me to the Drug Rehabilitation Center at Lutheran Deaconess Hospital in Minneapolis, Minnesota. My drug problem arises from my father's introduction to me of drugs when I was 8 or 9 years old. I stayed there until January 5, 1979.

12. I am no longer involved in drugs. I have friends who do not use them.

13. I wish to live with my mother and stepfather who help me a lot, especially in the drug area.

14. My future care, training and personal relationships are all in Illinois, and not in Kentucky. I have no contact with Kentucky.

15. My mother has taken me to visit my father in Jeffersonville, Indiana, but my father has not contributed any money at all to my support, maintenance or welfare since he turned me over to my mother in December, 1977.

I have read the above statements in this Affidavit, and all the statements in my stepfather's brief. They are all true and correct.

(s) Andre Zigoris

SEAL

STATE OF ILLINOIS
COUNTY OF LAWRENCE } ss.

Subscribed and sworn to before me, a Notary Public in and for said County and State, on this, the 3rd day of January, 1981.

(s) Guy E. McGaughey, Jr.
Notary Public

My Commission Expires: August 17, 1983

## APPENDIX P

# JEFFERSON CIRCUIT COURT

SECOND DIVISION

No. 80-CI-06156

SHIRLEY ZIGORIS MCGAUGHEY,
GUY E. MCGAUGHEY, JR. - - - - - *Petitioners*

*v.*

MARK ZIGORIS - - - - - - - *Respondent*

## AFFIDAVIT OF ALEXIA ZIGORIS age 13

STATE OF ILLINOIS
COUNTY OF LAWRENCE } ss.

The undersigned Alexia Zigoris, being first duly sworn, upon her oath deposes and says as follows:

1. That I am the minor daughter of Mark Zigoris, father, and Shirley Zigoris McGaughey, mother.

2. I have lived in Illinois since April, 1978, and was living in Illinois in the month of June, 1980. My home state has been Illinois since April, 1978.

3. My father moved me from Kentucky in the month of June, 1973, to Jeffersonville, Indiana.

4. My mother kept me in Florida in March, 1978, when she learned about the marijuana in our home in Jeffersonville, Indiana, and the activities of our teenage babysitter with a next-door neighbor girl, Vicki Sturms, some of which happened in our home in Jeffersonville, Indiana.

5. I enrolled in Parkview Junior High School in the fall of 1978, and have been at that school ever since. I was elected one of the 4 cheerleaders in 1979, and again, elected

by the student body to be a cheerleader in 1980. I am attaching pictures of my cheerleading.

6. I have swum a lot and have won many ribbons as a member of the girls' swimming team.

7. While collecting for Jerry Lewis' Marathon, I was helpful in saving an old lady's life. I was given a commendation for this. Pictures are attached

8. I have my own room, my own telephone, many girlfriends, and my mom takes good care of me.

9. I want to live with my mother. We do a lot of "girl" things together, like shopping, cooking, and just talking about "girl" things.

10. I have been to visit my father in Jeffersonville, Indiana, but he has not contributed any to my support.

11. I go to the Presbyterian Church in Lawrenceville, Illinois.

12. My future care, training and personal relationships are all in Illinois, and not in Kentucky. I have no contact with Kentucky.

I have read the above statements in this Affidavit and all the statements in my stapfather's brief. They are all true and correct.

(s) Alexia Zigoris

STATE OF ILLINOIS
COUNTY OF LAWRENCE } ss.

Subscribed and sworn to before me, a Notary Public in and for said County and State, on this the 3rd day of January, 1981.

(s) Guy S. McGaughey, Jr.
Notary Public

My Commission Expires: August 17, 1983

## APPENDIX Q

[LETTERHEAD OF CULVER SUMMER SCHOOLS]
12 June, 1978

Mr. and Mrs. Guy E. McGaughey
McGaughey and McGaughey
McGaughey Building
Lawrenceville, Illinois 62439

Dr. Mr. and Mrs. McGaughey:

The Summer Admissions Committee has been called to evaluate Andre Zigoris' application to the Culver Summer School of Horsemanship. Much consideration and discussion was given to Andre's application by the Committee.

Based on information in Andre's Admissions file, the Committee decided to deny Andre admission to Culver this summer. We feel Culver is not well suited for your son's needs.

We are returning your deposit check in the amount of $60.00 with this letter. We are also enclosing for your use the 1978 Midwest Private Camps Directory, which lists a number of other camps you may wish to consider for Andre.

We apologize for any inconvenience we may have caused you. Thank you for your interest in Culver.

Cordially,

(s) Timothy Warrick
Timothy J. Warrick
Admissions Officer

TJW:mh

cc: Dean John Shields

## APPENDIX R

June 16, 1978

Timothy J. Warrick, Admissions Officer
Culver Summer School
Culver, Indiana 46511

RE: Zigoris, Andre
DOB: 4-24-65

Dear Sir:

The parents of Andre Zigoris have requested that I write to you to give you my impressions of Andre so that you might have additional information that would assist you in reconsidering your decision about admitting Andre to the summer school.

It is my understanding that you have decided not to admit Andre because of the risk that he might use drugs or smoke marijuana while at the camp. I also understand your strict rules against such actions on the part of your students. If you had other reservations about Andre, I am unaware of them, and I asked the mother if there were any other reservations, and she indicated that there were not.

I originally saw Andre because of some behavior problems and some personality differences between Andre and his father. The mother and the father had divorced, and Andre was at that time living with his father. One of my recommendations was that Andre reside with his mother and that he was in need of structure and firm parenting. Also, in the environment in which Andre lived prior to his going to live with his mother, he was apparently exposed to a number of other children who smoked marijuana. I thought that the change of environment and his coming to live with his mother would be beneficial for him.

I saw Andre again after he went to live with his mother, and I saw him again today for a follow-up interview. I

also interviewed the mother at some length concerning his behavior.

From everything that I can determine, Andre has shown a great deal of improvement and maturity, and it is my opinion that he has not smoked any marijuana or had any drugs for at least six months. He has been exposed to the opportunity to both smoke marijuana and partake of drugs, and he apparently has been strong enough to refrain from doing that. Andre also used to smoke cigarettes, but he has given that up and has not smoked for over five months.

Andre's personality is such that, if he is convinced a course of behavior is best for him, he will pursue that rather tenaciously. Andre is a fairly independent boy and is not a passively dependent or conforming child. It would be very difficult for another child to convince him to do something if he did not want to do it. In my recent talk with Andre, I am convinced that he would withstand any pressures to smoke or ingest any drugs during the time that he is at Culver.

I personally feel that Andre will respond very well in a structured and firm environment such as it appears that you provide at your school. I believe that he has needed this all along and that he flourishes in that kind of an environment.

As a result of the move from his father's residence, Andre has had to attend a school which was much more strict and difficult, and he has survived quite well there. He has had trouble with the work because the previous school was much more permissive and less difficult.

Let me add that if I were suddenly appointed Admissions Officer for the Culver Summer School, and knowing Andre as I do, I would not hesitate to admit him to your summer program. If you have any further questions about Andre, please do not hesitate to call me.

Sincerely,

(s) T. E. Colley
Thomas E. Colley, Ph.D.
Clinical-Pediatric Psychology

TEC/lcb

**APPENDIX S**

[LETTERHEAD OF CULVER SUMMER SCHOOLS]
June 20, 1978

Mr. and Mrs. Guy M. McGaughey
McGaughey Building
Lawrenceville, IL 62439

Dear Mr. and Mrs. McGaughey:

As a result of your visit to the campus, Superintendent, John R. Mars, has elected to accept Andre for the Culver Summer School of Horsemanship.

We hope that Andre will take full advantage of this unique program and become a positive influence in camp.

I was told that Mr. Warrick gave you the Circular of Information, therefore, you should have all the data you need before the camp begins on Tuesday, June 27. If you have any addtional questions, contact the Admissions Office.

Sincerely,

(s) John Shields
John Shields
Dean of Admissions

JSS:bm

SHIRLEY MCGAHEY
ROUTE 1
LAWRENCEVILLE ILL. 62349

| | ACCOUNT | ADMIT | DISCH. | | |
|---|---|---|---|---|---|
| ZIGORIS, ANDRE M | L 771201-8 | 11/18/79 | | | |
| LUTHERAN DEACONESS HOSPITAL | | | | BALANCE FORWARD | $775.00 |
| ACCOUNT OUTSTANDING BALANCE | | | | | $775.00 |

FOR INFORMATION PHONE
1-612-371-6760 HOURS 8:30-4:00 MON-FRI

BALANCE PAY THIS AMOUNT ▶ $775.00

S
FAIRVIEW COMMUNITY HOSPITALS
P.O. BOX 147
MINNEAPOLIS, MN. 55440

GUARANTOR

STMT. DATE 04/29/80 PAGE 01

SHIRLEY MCGAUGHEY.
RT 1
LAWRENCVILLE ILL 62349

| | ACCOUNT | ADMIT | DISCH. | | |
|---|---|---|---|---|---|
| ZIGORIS, ANDRE M | L 771028-8 | 04/27/79 | 11/17/79 | | |
| LUTHERAN DEACONESS HOSPITAL | | | | BALANCE FORWARD | $7469.80 |
| ACCOUNT OUTSTANDING BALANCE | | | | | $7469.80 |

FOR INFORMATION PHONE
1-612-371-6760 HOURS 8:30-4:00 MON-FRI

BALANCE PAY THIS AMOUNT ▶ $7469.80

S
FAIRVIEW COMMUNITY HOSPITALS
P.O. BOX 147
MINNEAPOLIS, MN. 55440

83-928

No.

Office-Supreme Court, U.S.
FILED
JAN 4 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1983

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SHIRLEY McGAUGHEY, a/k/a
SHIRLEY ZIGORIS and
GUY E. McGAUGHEY, JR. - - - Petitioners

versus

MARK ZIGORIS - - - - - Respondent

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On Petition for Writ of Certiorari to the Supreme Court of Kentucky

---

## RESPONSE TO PETITION FOR WRIT OF CERTIORARI

---

JOSEPH V. MOBLEY
710 West Main Street
Louisville, Kentucky 40202
(502) 583-4816
*Counsel of Record for Respondent, Mark Zigoris*

December 29, 1983

WESTERFIELD-GOULD CO., 640 S. KENTUCKY-P.O. BOX 6201, LOUISVILLE, KY.

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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. _____

SHIRLEY MCGAUGHEY, a/k/a
SHIRLEY ZIGORIS and
GUY E. MCGAUGHEY, JR. - - - *Petitioners*

*v.*

MARK ZIGORIS - - - - - *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

## RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Respondent, MARK ZIGORIS respectfully requests that this Court deny the petition filed November 29, 1983 requesting that a Writ of Certiorari issue to review the judgment of the Supreme Court of Kentucky entered in the above-styled action on August 31, 1982.

### JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. §1257(3), seeking a Writ of Certiorari to the Supreme Court of Kentucky to review the de-

cision rendered on May 11, 1983, to decide whether the refusal of the Kentucky Supreme Court to recognize and enforce an Illinois modification of custody with the resultant child support award violates the principles of the full faith and credit clause contained in Article 4 §1 of the United States constitution. This Court lacks jurisdiction to hear this case and the grant of a Writ of Certiorari would be improvident as the issue argued in this Court was not properly raised in the state courts below. This Court has often stated that it will not reexamine the final judgment of a state court unless the record shows "either expressly or by clear implication that the Federal claim was adequately presented in the state system." *Webb* v. *Webb*, 101 S. Ct. 1889, 1892 (1981); *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67 (1928). The parties and the trial court in this action dealt with the case solely as a custody case, governed by the Uniform Child Custody Jurisdiction Act and the argument that the Illinois judgment was simply a money judgment for accrued child support arrearages and that the Uniform Child Custody Jurisdiction Act did not apply was not raised until a Petition for Rehearing was filed by Petitioners following the affirmance of the decision of the trial Court by the Kentucky Court of Appeals.

The Kentucky Supreme Court understood that the case involved the recognition and enforcement of an Illinois custody modification and the application of the Uniform Child Custody Jurisdiction Act. It found that the Petitioners' argument that the modification of custody could be separated from the child support

award was unpersuasive, observing that "it goes without saying that in the absence of custody, support is not granted."

It is clear that where a state court decision rests on adequate and independent states law grounds, this Court should not review the decision. *Radio Station W.O.W., Inc.* v. *Johnson,* 326 U. S. 120 (1945). The decision of the Kentucky Supreme Court in this case was based upon the application of the Uniform Child Custody Jurisdiction Act to the facts of this case. Until the Illinois modification of custody is recognized by the Kentucky courts, Respondent is the custodial parent and when the Kentucky Supreme Court, acting under Kentucky state law, more particularly the Uniform Child Custody Jurisdiction Act, decided that it was not obligated to recognize and enforce the Illinois custody modification, Petitioners' attempt to enter the Illinois judgment as a money judgment was meritless. Without a valid, recognized award of custody in favor of the Petitioners, Kentucky state law does not allow the enforcement of a child support award in favor of a non-custodial parent.

This Court is therefore without jurisdiction to issue a Writ of Certiorari to the Kentucky Supreme Court under 28 U.S.C. §1257(3) on the grounds that the Federal question raised by the Petitioners was not properly presented or preserved for review in the state court and further that the case was decided on independent, adequate state law principles, including the Uniform Child Custody Jurisdiction Act, and not involving the potential Federal questions raised by the Petitioners.

As the decision of the questions raised by the Petitioners was not necessary to the decision of the Kentucky Supreme Court, the Petition for Writ of Certiorari to that Court should be denied.

## STATEMENT OF THE CASE

The thirteen page statement filed by the Petitioners is so confusing, distorted and argumentative that it cannot fairly be said to clearly or concisely describe the facts material to consideration of this case. The statement contains allegations that are neither a part of the Record on Appeal nor material to the issues to be decided. The only proof in the Record to which Petitioners can refer in support of their allegations of the existence of emergency jurisdiction in the Illinois courts, is their prior briefs containing the same, unsubstantiated, self-serving, slanderous allegations. There has never been any proof of the existence of an emergency regarding the custody of these children. The allegations made in the Petition have never actually been litigated and no judge in any court has found them to be true, nor has there ever been found to be any justification for the Petitioner's violation of the Orders of the Courts of Indiana, Kentucky and Florida. Statements to the contrary are simply figments of the fertile imagination of the Petitioners. Respondent considers the following to be a clear and concise, chronological summary of the facts and procedural events necessary for a complete understanding of the issues presented by this case.

Shirley McGaughey (Petitioner) and Mark Zigoris (Respondent) were married on May 26, 1963, in Youngstown, Ohio. Three (3) children were born of the marriage, Dean Zigoris, born March 17, 1964, Andre Zigoris, born April 24, 1965, and Alexia Zigoris, born June 3, 1967. The parties were divorced on March 31, 1970, by the Clark County, Indiana, Superior Court in Action No. 69-D-657. A copy of the judgment entered after trial in chief on all issues, including custody, awarding permanent custody of the parties' children to Dr. Zigoris, is attached as Respondent's Exhibit No. 1. The children at that time were ages 6, 5 and 3. Subsequent to the parties' divorce in 1970, both moved to Louisville, Kentucky, where the children continued, of course, to reside with the custodial parent, the Respondent herein. In 1972, Petitioner initiated custody proceedings in Louisville, Kentucky, and after a hearing in chief, a judgment was entered denying that motion, said judgment being attached as Respondent's Exhibit No. 2. At that time, the children were ages 9, 8 and 6 and they continued to live with the Respondent, the custodial parent. They continued living with Dr. Zigoris into 1978 at which time they were ages 14, 13 and 11. In April, 1978, Petitioner (Shirley Zigoris), who had, in the interim, married and moved to Florida, took possession of the children in contravention of the Indiana and Kentucky judgments and initiated proceedings in Florida, requesting a transfer of custody. After a hearing at which Petitioner appeared only by counsel (her new husband) and Respondent appeared in person and with counsel, the Florida court declined

to modify the Indiana decree, granting Dr. Zigoris' request for recognition and enforcement of the Indiana and Kentucky custody decrees and ratifying and affirming the award therein of the custody of the parties' infant children to him. The Florida court found the conduct of the Petitioner contrary to the best interests of the children and to the purposes of the Uniform Child Custody Jurisdiction Act, particularly that portion which states that among the purposes is to "deter abductions and other unilateral removals of children undertaken to obtain custody awards." (See attached final judgment, Brevard County, Florida, Circuit Court, No. 78-1270-CA-01-A, Respondent's Exhibit No. 3).

Shortly prior to the entry of the Florida judgment, Shirley fled from Florida with the children and moved to Illinois where she once again initiated proceedings for a transfer of custody. Respondent was served with summons when in Illinois seeking access to the children. After a hearing, on December 18, 1978, in Petitioner's new husband's hometown, at which the parties were present, with counsel, the Illinois court assumed jurisdiction and granted temporary custody of the children to Petitioner. (R.A., p. 174). On April 22, 1980, the Illinois judge entered an order awarding Petitioner child support in the amount of $800.00 per month per child, retroactive to the date she had taken possession of each child and ordered Respondent to pay hospitalization expenses incurred for Andre and Petitioner's attorney's fee.

Petitioner, having finally found a court that agreed with her position, then petitioned the Jefferson Circuit Court in this action for enforcement of the provisions of the Illinois judgment regarding custody and support. The Jefferson Circuit Court judge heard the testimony and arguments of the parties and interviewed the children and agreed with the Florida court that there was no emergency and that Petitioner had taken both children from Florida to avoid enforcement of the orders of that court and he refused to enforce the Illinois degree, finding that the Illinois court had been without jurisdiction to modify the Indiana judgment, pursuant to Ill. Rev. Stat. Ch. 40 §2109 (KRS 403.470(2)), which provides in pertinent part, that:

> The court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

For this reason, the Jefferson Circuit Court judge held that the Kentucky courts were not obligated to give full faith and credit to the judgment of the Illinois court, transferring custody. From this judgment, Petitioners appealed to the Kentucky Court of Appeals and, on April 16, 1982, that Court affirmed the decision of the Jefferson Circuit Court, holding that KRS 403.-520 did not make recognition and enforcement of the

Illinois modification mandatory and that discretionary enforcement of that judgment would "run contrary to the very purposes for which the Uniform Act was enacted."

> To recognize and enforce the Illinois custody modification with the resultant arrearage order would be violative of the expressed purposes of Kentucky law and would make the courts of this Commonwealth an instrument in encouraging conduct which the legislature has sought to inhibit. Petitioner's Appendix E.

On Motion of the Petitioners, the Kentucky Supreme Court granted discretionary review and on May 11, 1983, affirmed the decision of the Kentucky Court of Appeals. Petitioners now seek review by this Court of that decision.

## ARGUMENT

The Petition for a Writ of Certiorari to the Kentucky Supreme Court should be denied as there is adequate and independent support under Kentucky law, for the decision of that Court pretermits the Federal question raised by the Petitioners.

The Uniform Child Custody Jurisdiction Act, first proposed in 1968, requires that a state recognize and enforce foreign custody modifications made under the Uniform Act or under factual circumstances meeting the jurisdictional standards of the Act. Among the purposes of the Act are the following:

(a) to avoid jurisdictional competition and conflict with Courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

* * * * * * *

(e) deter abductions and other unilaterial removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible.

KRS 403.400.

The Uniform Act was adopted in Kentucky on July 15, 1980 (KRS 403.420 - 403.620) and in Illinois on September 11, 1979 (Ill. Rev. Stat. Ch. 40, §§2101-2126). Prior to that time, both states had in effect only the primary jurisdictional section of the Act. (KRS 403.260 and Ill. Rev. Stat. Ch. 40 §601).

KRS 403.520 (§13 of the Uniform Act) provides for the recognition and enforcement of foreign custody decrees by the courts of this state:

> The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with KRS 403.420 to 403.620, or which was made under factual circumstances meeting the jurisdictional standards of KRS 403.420 to 403.-620.

It cannot be said that the Uniform Act was law in Illinois at the time the Illinois decree was rendered

and neither can it be said that the law in Illinois at that time was substantially in accordance with the Uniform Act. (*Compare,* Ill. Rev. Stat. Ch. 40 §601 *with* KRS 403.420 to 403.620). The sole question, thus, is whether the Illinois modification was rendered under factual circumstances meeting the jurisdictional standards of KRS 403.420 to 403.620.

The Jefferson (Kentucky) Circuit Court and the Kentucky Court of Appeals held that had the Illinois Court been applying the standards of jurisdiction found in the Uniform Act, the assumption of jurisdiction by that court would have been improper. KRS 403.470 §8 of the Uniform Act, provides that:

> Unless required in the interest of the child, *the Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody* or has improperly retained the child after a visit or other temporary relinquishment of physical custody . . . (emphasis added).

The Commissioner's note to this section interprets it as a codification of the common law "clean hands" doctrine, making refusal of jurisdiction mandatory "in the case of illegal removal or retention of the child . . . unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct". Petitioners maintain correctly that this section applies only where a court otherwise has jurisdiction to modify a custody decree and further correctly observe that the

Kentucky courts, in this case, do not have jurisdiction to modify the Illinois judgment. However, that is not the relevant inquiry. The question to be decided is whether the jurisdiction of the Illinois court, at the time the judgment sought to be enforced was rendered, was proper under the standards of the Uniform Act. The foregoing section must be applied to the assumption of jurisdiction by the Illinois courts, not the Kentucky courts, and Respondent maintains that even if the assumption of jurisdiction by the Illinois courts was otherwise proper, this section required that court to refuse to exercise it.

The decisions of the Kentucky courts support the finding that the Illinois court lacked subject matter jurisdiction under the Uniform Act to modify the prior custody decrees of Indiana, Kentucky and Florida. In *Freeman* v. *Freeman,* Ky., 547 S. W. 2d 437 (1977), the Kentucky Supreme Court refused to modify a Florida judgment, granting permanent custody to the father where the mother had stolen the children and moved to Kentucky where she hid the children and instituted proceedings for modification. At the time the case was decided, only the primary jurisdictional section of the Uniform Act was in effect in Kentucky and the Court, relying solely on that section and on the policies underlying the Uniform Marriage and Divorce Act, held that the period of time the children were hidden in the state did not have the effect of giving them home state "status" for the purpose of acquiring jurisdiction and further held that:

It is an intolerable state of affairs where self-help and the rule of "seize and run" prevail rather than the orderly processes of law. Until the adoption in this Commonwealth of the Uniform Marriage and Divorce Act, KRS Chapter 403, with particular reference to KRS 403.260, Custody, we had no firm guidelines for determining jurisdiction in child custody proceedings or for the purpose of recognizing and giving effect to the orders of courts of other jurisdictions involving the custody of children. The philosophy of the Act is to stabilize and bring some semblance of order into the determination of child custody proceedings thereby reducing jurisdictional conflict between the various states. We are of the opinion that according to the provisions of the Act, the Florida Court has jurisdiction of custody in this case.

We are of the further opinion the trial court acted properly in giving full faith and credit to the orders of the Florida Court. *Any other disposition by the trial court would have the effect of rewarding the mother for ignoring and attempting to circumvent valid court orders.*

* * * * * * *

Our observation is that the "best interest" of the child has been lost in the thicket of the wishes of the parents here. We can only hope both parents will refrain from "self-help" in the future and rely upon the courts to determine what the parents cannot. The alternative to an orderly judicial process is chaos. Admittedly the system is not perfect; however, it is far better than a series of hide and seek situations which are detrimental to the well-being of any child.

*Id.* at 440-442.

In *Wood* v. *Graham,* Ky., 633 S. W. 2d 404 (1982), the Kentucky Supreme Court granted a writ of prohibition, prohibiting the judge of the Breathitt (Kentucky) Circuit Court from taking any action regarding custody of the child and ordering the father to return the child to the temporary custodian in a case where the child had lived in Ohio its entire life and was taken from the temporary custodian in Ohio by its father and brought to Kentucky two (2) days prior to the filing of the lawsuit. This Court held that:

> The action of the father in removing the child from Ohio is a classic example of the type of conduct that triggered the enactment of the statute by our General Assembly. As stated in the statute, one of the purposes of the Act is to deter "abduction and other unilateral removals of children." In addition, the statute mandates that a Kentucky court "shall not exercise its jurisdiction to modify a custody decree of another state," if the petitioner has improperly removed the child from its legal custodian. KRS 403.470(2).
>
> *Id.* at 406.

This approach has been applied by several other courts in similar situations under the Uniform Act and these cases serve to reinforce Respondent's position that the Kentucky courts were not bound by KRS 403.520 to recognize and enforce the Illinois decree.

In *In Re Marriage of Hopson,* 110 Cal. App. 3d 884, 168 Cal. Rptr. 345 (1980), a 1976 Arizona divorce decree awarded custody of two (2) children to their mother, providing that neither party was to remove the children from Arizona without the consent of the Court.

In February, 1977, the mother removed the children to California without the permission of the father or the court. In September, 1977, the father moved the Arizona court for a modification of custody and during the pendency of that action, removed the children from California to Tennessee without the knowledge or consent of the mother and began custody proceedings in Tennessee. In January, 1978, Arizona denied the father's motion for a change of custody and ratified the mother's removal of the children to California. In March, 1979, the Tennessee courts assumed jurisdiction and awarded custody of the children to their father. In May of 1979, the mother moved the California courts for enforcement of the January, 1978, Arizona decree and the father moved for recognition and enforcement of the Tenneessee modification. The California court refused to recognize and enforce the Tennessee decree in a lengthy and well-reasoned opinion. California and Arizona, during the pendency of these proceedings, had in effect the Uniform Act. Tenneessee did not. The California court held that subject matter jurisdiction could not be conferred on the Tennessee courts solely by the mother's participation in those proceedings and that the relevant inquiry was whether the order of the Tennessee court was made substantially in accordance with the Uniform Act. After discussing in depth the jurisdictional requirements of the Uniform Act, including the clean hands provision, Section 8, the court could find no justification for the father's kidnapping and concluded that "given the clear purpose and policy of the UCCJA to

deter child-napping, the Tennessee court failed to comport with jurisdictional standards substantially in accordance with the UCCJA". *Id.* at 356.

Regarding the failure of the Tennessee court to follow the procedures outlined in the UCCJA, the California court observed that:

> The fact that Tennessee did not follow procedures that conform substantially with those of the statute is understandable in light of the fact that Tennessee has not adopted the UCCJA. Nevertheless, we are compelled to apply the principles of the UCCJA in determining the validity of the Tennessee order, i.e., the propriety of its exercise of jurisdiction. Substantial evidence indicating a total absence of procedural safeguards in conformity with those established by the UCCJA further supports our conclusion that the Tennessee judgment was not entitled to full faith and credit. *Id.* at 357.

After hearing the testimony and arguments of the parties in this case, the trial judge determined that no emergency existed, that Petitioners' had removed the children to Illinois in violation of the orders of three (3) states and that for these reasons, the assumption of jurisdiction by the Illinois courts was not made under factual circumstances warranting the assumption of jurisdiction under the Uniform Act and the Illinois decree was therefore not entitled to recognition and enforcement by the courts of this state. In fact, the courts of all three (3) states, Indiana, Kentucky and Florida, have heard and not believed Petitioners' arguments that an emergency existed and

that the children would suffer irreparable injury if they did not act.

Thus the decision of the Kentucky Supreme Court is supported by independent, adequate state grounds and the decision of the Federal question raised belatedly by the Petitioners was not necessary to a decision in this case. Without custody, under Kentucky law, there is no basis for an award of child support to the Petitioner. Cf., *Goff* v. *Goff*, Ky., 323 S. W. 2d 209 (1959) (holding that a modification of custody automatically terminates a support award).

The final irony is that this litigation, which has progressed at Petitioners' insistance through the Courts of four states, has effectively denied the children's access to their father for over five years. The real losers in this case are the children, Alexia, now 16, and Andre, now 18, for because of their mother's actions, they have been deprived of their most valuable and supposedly their most inalienable relationship—that being the relationship between a child and his natural parent.

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of Kentucky should be denied.

Respectfully submitted,

JOSEPH V. MOBLEY
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710 West Main Street
Louisville, KY 40202
(502) 583-4816
*Counsel for Respondent*

# APPENDIX

## RESPONDENT'S EXHIBIT #1

**STATE OF INDIANA, CLARK COUNTY, ss:**

BE IT KNOWN; That on the 31 day of March, 1970 the same being the _____ judicial day of said year of the Clark Superior Court, of Clark County, Indiana, held at the Court House in the City of Jeffersonville, in said County and State, before the Honorable Warren W. Martin, Jr., Judge of said Court, the following proceedings were had, viz:

MARK ZIGORIS
*v.*
SHIRLEY ZIGORIS
} No. 69-D-657

Comes now the petitioner in person and by his attorneys, Fifer, Vogt, Hoodenply and Lanum. Comes also the defendant by her attorneys, McDaniel, Forrest, Young and McDaniel.

The Court finds that the defendant was served with summons at least ten days before the date on which the defendant was to appear as shown by the date endorsed on the petition for divorce, stated in the summons when issued and as shown by the endorsement of the Sheriff of Clark County, Indiana, on the return of the summons, which endorsement, summons and return reads as follows:

The Court further finds that more than sixty days have expired from the date of the issuance of the summons which was served on the defendant.

The Court having heard part of the evidence in this cause on March 23, 1970, and having continued this cause until this date, and the court now having concluded hearing the evidence in this cause and being advised in the premises, the court finds:

a) that the petitioner has been a bona fide resident of the State of Indiana for one year previous to the filing of his petition for divorce, and a bona fide resident of Clark County, Indiana, at the time and for six months immediately preceding the filing of his petition for divorce;

b) that the petitioner should be granted an absolute divorce from the defendant;

c) that the best interest of the children requires that their custody be awarded to the petitioner until the further order of this court;

b) that the court makes no determination that the defendant is not a fit and proper person to have the custody and control of the minor children, but that at this time her mental condition dictates that the children be awarded to the petitioner;

e) that the defendant should be granted the right to visit with the parties' minor children at reasonable times;

f) that the following personal property should be set off to the defendant, free and clear of all liens and encumbrances: color television; silver; china, bedroom suite of defendant; Toyota automobile; and all personal wearing apparel, jewelry, etc. of the defendant;

g) that the following personal property should be set off to the petitioner free and clear of all claims of the defendant: all remaining household goods and effects not already in the possession of the defendant and still in the possession of the petitioner, except those set out in f) above; Pontiac automobile; and all personal wearing apparel, etc. of the petitioner;

h) that the petitioner should transfer the title to the Toyota automobile to the defendant as soon as possible; and

i) that the petitioner should pay the defendant the sum of $10.00 per week for a period of 3 months, beginning

April 4, 1970, and ending July 4, 1970. It is therefore ordered:

1. that the petitioner, Mark Zigoris, be, and he is hereby, granted an absolute divorce from the defendant, Shirley Zigoris;

2. that the petitioner be, and he is hereby, awarded the custody of the parties' minor children: Dean Zigoris, age 5 years; Andre Zigoris, age 4 years; and Alexia Zigoris, age 2½ years;

3. that the defendant be granted the right to visit with the parties' minor children at reasonable times;

4. that the following personal property is set off to the defendant, free and clear of all liens and encumbrances: color television; silver; china; bedroom suite of defendant; Toyota automobile; and all personal wearing apparel, jewelry, etc. of the defendant;

5. that the following personal property is set off to the petitioner, free and clear of all claims of the defendant: all remaining household goods and effects not already in the possession of the defendant and still in the possession of the petitioner, except those set out in section 4 above; Pontiac automobile; and all personal wearing apparel, etc. of the petitioner;

6. that the petitioner shall transfer the title to the Toyota automobile to the defendant as soon as possible; and

7. that the petitioner shall pay to the defendant the sum of $10.00 per week for a period of 3 months, beginning April 4, 1970, and ending July 4, 1970. So ordered this 31st day of March, 1970.

(s) Warren W. Martin, Jr.
Clark Superior Court Judge

State of Indiana }
Clark County } ss:

I, John Gelhaus, Clerk of the Clark Superior Court, of Clark County, in the State of Indiana, do hereby certify that the foregoing is a full, true and complete copy of the proceedings had in said Court, in the above entitled cause, on the day and year first aforesaid, as the same appears and remains of record in my office.

In Testimony Whereof, I hereunto subscribe by name and affix the seal of said Court, at my office in the City of Jeffersonville, this 24th day of August, 1971.

(s) John Gelhaus
Clerk of Clark Superior Court of
Clark County, Indiana

**RESPONDENT'S EXHIBIT # 2**

# JEFFERSON CIRCUIT COURT

CHANCERY BRANCH
THIRD DIVISION

**No. CR 153,871**

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SHIRLEY ZIGORIS - - - - - - - *Plaintiff*

*v.*

MARK ZIGORIS - - - - - - - *Defendant*

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## JUDGMENT

By a Decree entered March 31, 1970, in the Superior Court of Clark County, Indiana, the parties to this action were divorced and the Defendant, Mark Zigoris, was awarded the custody of the three infant children of the parties.

Subsequent to the divorce both parties moved to Louisville, Kentucky. The children are Dean Zigoris, nine years of age, Andre, eight years of age, and Alexia Zigoris, six years of age.

The Defendant, father, is a professional man in the field of dentistry. According to the proof in the record he is taking very good care of the children and has a mature woman acting as a full-time babysitter and housekeeper for his home. The Plaintiff, mother, in this action is seeking a change of custody and an award of support.

The evidence reveals that this woman has had emotional problems and even though she testified that these problems have been resolved we are not convinced that it would be for the best interest of the children to change their custody.

Since her divorce from Dr. Zigoris she has married and divorced a second husband and according to her testimony she is keeping company with a third man and at this time she doesn't know whether or not she will marry him.

We find no evidence in the testimony of any such change of circumstances of either Plaintiff, the Defendant, or the children as would warrant a change of custody.

According to the evidence Mrs. Zigoris is enjoying liberal visitation privileges with these children and apparently Mrs. Zigoris is on an extremely friendly relationship with both of her ex-husbands and her present gentleman friend and the children and we see no reason to disturb these relationships.

There is nothing in the evidence to testify to the fact that these children would be in her custody for such an extended visitation period as would warrant an award of support for such periods. It very well could be that if Mrs. Zigoris does have visitation privileges with these children for an extended period of time the Court might consider making such an award.

Plaintiff's Complaint is dismissed and the Defendant is allowed his costs.

Dated this 25th day of January, 1973.

(s) Lyndon Schmid, Judge

CC to: Mr. Edwin I. Baer
Mr. Joseph V. Mobley, Jr.

**RESPONDENT'S EXHIBIT #3**

**IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA**

**Case No. 78-1270-CA-01-A**
**Case No. 78-1311-CA-01-E-A**

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MARK ZIGORIS, - - - - - - - *Petitioner,*

*v.*

SHIRLEY ZIGORIS MCGAUGHEY, f/k/a SHIRLEY ZIGORIS,

AND

SHIRLEY ZIGORIS MCGAUGHEY, f/k/a SHIRLEY ZIGORIS, - - - - - - *Petitioner,*

*v.*

MARK ZIGORIS, - - - - - - - *Respondent.*

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**FINAL JUDGMENT**

THIS CAUSE having come on for hearing on the Motion for Entry of a Judgment filed by the Petitioner, Mark Zigoris, and appearing at the hearing, Dwight W. Severs, Attorney for Petitioner, and Jack Kirschenbaum, representing Shirley Zigoris McGaughey, and the Court, after hearing the testimony of the Petitioner, Mark Zigoris, and his witnesses and the Court after considering other evidence that was submitted finds:

1. That this Court has jurisdiction over the parties and the subject matter thereof. That the Court has personal jurisdiction over the Respondent by reason of her filing a Petition for Modification of Final Judgment and appearance by counsel in this cause.

2. That on April 11, 1978, the Petitioner filed, in Civil Action No. 78-1270-CA-01-A a certified copy of the Judgment entered by the Jefferson County Circuit Court, Louisville, Kentucky; said Judgment being filed in accordance with Florida Statutes, Chapter 61.1332.

3. That on or about April 13, 1978, the Respondent, Shirley Zigoris McGaughey, filed a Petition for Modification of a Foreign Decree requesting a change of custody for the minor children, Andre Zigoris and Alexia Zigoris; said action being filed in Civil Action No. 78-1311-CA-01-E.

4. That on May 4, 1978, Petitioner, Mark Zigoris, filed a Petition for Recognition and Enforcement of a Custody Decree of Another State.

5. That on the 10th day of May, 1978, an Order was entered by this Court consolidating Civil Action Nos. 78-1270-CA-01-A and 78-1311-CA-01-E.

6. That on the 10th day of May, 1978, a hearing was scheduled before the Court on the Petition of Mark Zigoris for recognition and Enforcement of Custody Decree of Another State. At the hearing, Respondent, Shirley Zigoris McGaughey failed to appear, and appearing on her behalf was attorney, Curtis Mosley and Guy McGaughey, Husband of Shirley Zigoris McGaughey. During the hearing it was learned that the Respondent, Shirley Zigoris McGaughey had left with the minor child, Alexia Zigoris and did not intend to produce the minor child, Alexia Zigoris nor did she intend to abide by the previous Custody Decrees of the State of Indiana and the State of Kentucky. As a result of said hearing, this Court entered an Order directing the Sheriff of Brevard County, Florida and the Sheriffs of the State of Florida, to take the minor child, Alexia Zigoris, into custody and deliver the minor child to Mark Zigoris.

7. That at the hearing before this Court, on June 26, 1978, the evidence showed:

(a) That the Petitioner, Mark Zigoris, is presently entitled to enforcement and recognition in Florida of the Indiana and Kentucky Decrees.

(b) That a Judgment has previously been entered on March 31, 1970, by Warren W. Martin, Judge of the Clark Superior Court, Jeffersonville, Indiana, awarding, Mark Zigoris, custody of the three (3) minor children; that a Judgment was entered on January 25, 1973, by Lyndon Schmid, Judge of the Jefferson County Circuit Court, Louisville, Kentucky, denying the Petition for Modification filed by the Respondent, Shirley Zigoris McGaughey, and reaffirming custody in the Petitioner, Mark Zigoris. The Indiana Decree and the Kentucky Decree were entered under factual circumstances meeting the jurisdictional standards of the Uniform Child Custody Act. That in accordance with Florida Statutes 61.1328 and 61.1332, that said Judgment is entitled to full faith, credit and recognition and enforcement in the state of Florida.

(c) That approximately five (5) years prior to March 19, 1978, Dean Zigoris and Alexia Zigoris have resided with their father, Mark Zigoris in Jeffersonville, Ind. That the minor child, Andre Zigoris has resided with Mark Zigoris for the previous five (5) years except since November, 1977 when the parties agreed that Andre Zigoris could reside with his mothrer, who lived in Jeffersonville, Ind.

(d) That during the earlier part of March, 1978, the Respondent, Shirley Zigoris McGaughey and her husband, Guy McGaughey, moved to the state of Florida and rented an apartment at 5801 North Atlantic Blvd., Apartment 709, Cape Canaveral, Florida. That on or about March 19, 1978, pursuant to an agreed visitation, Mark Zigoris arranged for the minor children, Dean Zigoris and Alexia

Zigoris to visit with their mother in the state of Florida. That the minor children, Dean Zigoris and Alexia Zigoris, were to return on March 28, 1978. That the minor child, Andre Zigoris had been visiting Mrs. McGaughey, pursuant to an agreement between the parties. That on or about March 28, 1978, the minor child, Dean Zigoris returned to the Petitioner, Mark Zigoris in the state of Indiana, but the Respondent failed and refused to return the minor child, Alexia Zigoris. That the Petitioner, Mark Zigoris, attempted to contact the Respondent and the minor child Alexia Zigoris, but the telephone number of the apartment in Florida had been changed and the new number unlisted. That Mark Zigoris contacted the Brevard County Sheriff's Department and another individual requesting their assistance in locating the minor child, Alexia Zigoris. That on March 28, 1978, the Petitioner flew from the state of Indiana to Brevard County, Florida, and upon arriving at the residence of Guy McGaughey, learned that the parties had just left approximately two (2) hours earlier. That between March 28, 1978, and April 10, 1978, despite the efforts of Petitioner to locate Alexia Zigoris, Petitioner was unable to locate her. That on April 10, 1978, Petitioner learned that the minor child was in Brevard County, Florida, and on April 11, 1978, filed a certified copy of the Kentucky Decree with the Clerk of the Circuit Court, Brevard County, Florida. That on or about April 13, 1978, Mark Zigoris, pursuant to the earlier Court Decrees, arranged for the minor child, Alexia Zigoris, to be picked up and taken back to the state of Indiana, with the assistance of the Brevard County Sheriff's Department. That after returning the minor child Alexia Zigoris to the state of Indiana, on April 20, 1978, without permission or consent of the Petitioner, Mark Zigoris, Respondent, Shirley Zigoris McGaughey, removed the minor child, Alexia Zigoris, from the school that Alexia was attending

and returned the minor child to the state of Florida. That no Court Orders were in effect authorizing Respondent to have custody of Alexia Zigoris. On April 22, 1978, Shirley Zigoris McGaughey threatened that she would remove the minor child, Alexia Zigoris, from the continental United States in the event Petitioner, Mark Zigoris did not give custody to the Respondent.

(e) That on May 10, 1978, a hearing was scheduled before this Court on the Petition of Mark Zigoris for Recognition and Enforcement of the Indiana and Kentucky Decrees. That at the hearing, it was learned that the Respondent, Shirley Zigoris McGaughey, even though represented by counsel at the hearing, had left the aforementioned apartment earlier in that day, and had gone into hiding, and her husband, Guy McGaughey stated that he was unaware of her location. That from May 10, 1978 until the hearing before this Court, on June 26, 1978, the petitioner through the employment of a private investigator, and with the efforts of the Brevard County Sheriff's Department has not been able to locate the minor child, Alexia Zigoris, despite an Order being entered on May 10, 1978 directing the Sheriffs of the State of Florida to take Alexia Zigoris into custody, and delivering the minor child to Mark Zigoris. The Respondent, Shirley Zigoris McGaughey has failed and refused to abide by this Court's Order dated May 10, 1978, which directed that the minor child, Alexia Zigoris be returned to the Petitioner, Mark Zigoris.

(f) That the evidence showed that the Respondent, Shirley Zigoris McGaughey had a meeting with Petitioner, Mark Zigoris, approximately ten (10) days prior to June 26, 1978. At the meeting she indicated that the Petitioner would not see the minor child, Alexia Zigoris and that the Respondent, Shirley Zigoris McGaughey intended to engage in a custody battle concerning Alexia Zigoris at some point

in time in the future at some other location when she considered her timing to be appropriate and her location appropriate. In addition, she was aware that the financial expense incurred by the Petitioner was substantial and that she intended to financially exhaust, Mark Zigoris, in his efforts to regain custody.

(g) That from May 10, 1978 until approximately June 5, 1978, the minor child, Andre Zigoris resided at the apartment in Cape Canaveral, Florida without the supervision of Shirley Zigoris McGaughey. That during that period of time the child was left alone except for a neighbor looking in on him. That the conduct of leaving Andre Zigoris alone and not under parental supervision is contrary to the best interest of the minor child and Mark Zigoris is entitled to have custody of Andre Zigoris reaffirmed in his custody.

(h) That the evidence showed that a hearing was held before this Court on June 5, 1978 for the purpose of entering a Restraining Order prohibiting Andre Zigoris from being removed from the jurisdiction of this Court. That on June 5, 1978, approximately three (3) days prior to school being dismissed for the school year 1977-1978, Andre Zigoris, was taken out of school and left the state of Florida.

(i) That the evidence showed that as it related to the issue of custody of Alexia Zigoris and Andre Zigoris that each child was taken from the state to avoid enforcement of the Orders of this Court.

8. That this Court finds that the aforementioned conduct by the Respondent, Shirley Zigoris McGaughey, is contrary to the best interest of the minor children, Alexia Zigoris and Andre Zigoris and that said conduct, if it continues, should deprive the Respondent, Shirley Zigoris McGaughey, of further visitation with the minor children in the event the conduct continues by refusing to return

the minor children to the Petitioner who is entitled to custody. That in addition, the Court finds that the conduct of the Respondent Shirley Zigoris McGaughey is contrary to the purposes of the Uniform Child Custody Act, as adopted by the state of Florida, and particularly that portion of the Act contained in Florida Statutes 61.1304 which states as some of its purposes to:

> "deter abductions and other unilateral removals of children undertaken to obtain custody awards."

9. That based upon the aforementioned findings and evidence submitted, it is

ORDERED and ADJUDGED as follows:

1. That Petitioner's Request for Recognition and Enforcement of that certain Judgment entered on March 31, 1970, by Warren W. Martin, Judge of the Clark Superior Court, Jeffersonville, Ind., Action No. 69-D-657, and that certain Judgment entered on January 25, 1973 by Lyndon Schmid, Judge of the Jefferson County Circuit Court, Louisville, Kentucky, Action No. 153871, that awarded custody of the minor children, Dean Zigoris, Andre Zigoris and Alexia Zigoris, to Mark Zigoris, is hereby granted. The aforementioned Judgments and Decrees are hereby established as Florida Judgments and are entitled to recognition and enforcement as Florida Judgments and Decrees.

2. The award of custody to Petitioner, Mark Zigoris, in the aforementioned Decrees, is hereby ratified and affirmed and the Petitioner, Mark Zigoris, is hereby awarded custody of the minor children, Dean Zigoris, Andre Zigoris, and Alexia Zigoris.

3. That the Sheriffs of the State of Florida are hereby directed to take Dean Zigoris, Andre Zigoris and Alexia Zigoris, if they can be found in the State of Florida, and to

physically deliver said minor children to Petitioner, Mark Zigoris.

4. That the request of the Petitioner, Mark Zigoris, for reimbursement of attorney's fees and costs, pursuant to Florida Statutes 61.1332 is hereby granted and the Respondent, Shirley Zigoris McGaughey, is hereby Ordered and directed to pay to Mark Zigoris, the sum of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00) as a contribution towards the attorneys' fees of Mark Zigoris; the sum of Seven Hundred Sixty Three and 66/100 Dollars ($763.66) as travel expenses and the sum of Two Thousand One Hundred Forty Five and 03/100 Dollars ($2,145.03) as Court costs and investigators costs. That a Judgment is hereby entered against, Shirley Zigoris McGaughey in the amount of Five Thousand Four Hundred Eight and 69/100 Dollars ($5,408.69) in favor of Petitioner, Mark Zigoris for which let execution issue. That the previous Orders of this Court of attorneys' fees for failure to permit discovery are ratified and confirmed.

DONE AND ORDERED in Chambers at Rockledge, Brevard County, Florida this 14th day of July, 1978.

(s) Roger H. Dykes
Circuit Judge

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Office - Supreme Court, U.S.
FILED
JAN 11 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-928

# SUPREME COURT OF THE UNITED STATES

October Term, 1983

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SHIRLEY McGAUGHEY, a/k/a
SHIRLEY ZIGORIS and
GUY E. McGAUGHEY, JR. - - - Petitioners

vs.

MARK ZIGORIS - - - - - - - Respondent

---

## REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

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January 9, 1984

WESTERFIELD-GOWTE CO., 610 W. KENTUCKY—P.O. BOX 2291, LOUISVILLE, KY.

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**Exhibit 1** — Petitioner's Motion for Summary Judgment, Jefferson Circuit Court, Louisville, KY 80CI-06156 raising federal question of Full Faith and Credit in the first instance, August, 1980...11–15

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## REPLY TO ARGUMENTS FIRST RAISED IN RESPONDENT'S RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

The Petitioners respectfully submit their reply brief.

### JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(3).

The Respondent challenges this Court's jurisdiction on two points. (1) Custody only was raised in the Kentucky State Courts and no argument was presented or preserved for review in the Kentucky State Courts as to full faith and credit of an Illinois money judgment for accrued child support, citing *Webb* v. *Webb,* 101 S. Ct. 1889 (1981) and *New York ex rel. Bryant* v. *Zimmerman,* 278 U. S. 63 (1928) and/or (2) this case was decided in Kentucky on independent, adequate state law principles including the Uniform Child Custody Jurisdiction Act (UCCJA), not involving any federal questions, citing *Radio Station W.O.W., Inc.* v. *Johnson,* 326 U. S. 120 (1945).

As to the first challenge, we submit the *Webb* case requires the federal Full Faith and Credit claim to be raised in the Kentucky State proceedings and preserved for review.

Petitioner's Complaint in the Kentucky Trial Court did not seek Kentucky modification of custody as the parties and children were all non-residents of Kentucky. Rather, it sought enforcement against the Father, employed in Kentucky, of an accrued child

support order, the legal basis therefor being the Full Faith and Credit clause, Article 4, § 1 of the United States Constitution and 28 U.S.C. § 1738. Respondent tried to inject by Counterclaim a Request for Modification of Custody but this was denied by the Kentucky Trial Court because of the non-residence of the parties and children.

Respondent also advanced the theory Illinois subject matter jurisdiction could be collaterally attacked in Kentucky, basing his argument on the child abduction features of the UCCJA which was not in existence when the Illinois Court assumed jurisdiction. We attach as Exhibit 1 (pp. 11-15) to this Reply a copy of Petitioner's Motion for Summary Judgment filed in the Kentucky Trial Court, to which Respondent filed a Response. Exhibit 1 clearly argues, in the first instance, the applicability of the Full Faith and Credit clause of the United States Constitution and the non-applicability of the Kentucky UCCJA.

All briefs filed by the Petitioners in the Trial Court, the Appellate Court and the Supreme Court of Kentucky cited *Milliken* v. *Meyer, infra, Davis* v. *Davis, infra, Sherrer* v. *Sherrer, infra, Coe* v. *Coe, infra* and *Williams* v. *North Carolina.* In their Petition for Rehearing in the Appellate Court, Petitioners submitted the additional U. S. Supreme Court controlling cases of *Sistare* v. *Sistare, infra,* and *Yarborough* v. *Yarborough, infra,* as permitted under K.R.S. 76.32, where the Court has overlooked controlling decisions.

The Full Faith and Credit question was ruled upon by the Trial Court (Petitioner's App., p. 51), the Court of Appeals of Kentucky (Petitioner's App., p. 44), and the Supreme Court of Kentucky (Petitioner's App.,

p. 34) as well as the dissent of Justice Leibson and Justice Vance (Petitioner's App., p. 38).

Clearly, *Webb* v. *Webb, supra,* is inapposite because the federal issue was presented and ruled upon throughout the Kentucky State Courts. In *New York ex rel. Bryant* v. *Zimmerman,* 278 U. S. 63 (1928) the Court held the federal question had been preserved.

Respondent's second challenge is the instant case was decided on independent, adequate state law of principles, including the Kentucky UCCJA, not involving any federal question. Respondent cites *Radio Station W.O.W., Inc.* v. *Johnson,* 326 U. S. 120 (1945). That case involved the relation of the Federal Communications Act to the power of a state to adjudicate conflicting claims to the property used by a licensed radio station. This Court denied the challenge of jurisdiction, accepted jurisdiction, addressed the federal question and remanded the judgment of the Supreme Court of Nebraska, requiring it to withhold execution of that portion of the Nebraska decree requiring re-transfer of physical properties until steps were ordered to be taken, with all deliberate speed, to enable the Commission to deal with new applications in connection with the radio station.

In the instant case, no federal agency is involved. This is a Full Faith and Credit Constitutional issue, which was not present in *Radio Station W.O.W., Inc.* v. *Johnson, supra.*

## STATEMENT OF CASE

Respondent's statement of the case as to issues of *children* abduction, a Florida "hearing", and a Kentucky "hearing" are incredibly inaccurate and mis-

leading. He has also attempted to divert this Court's attention from the Father's drug abuse and parental misconduct by lightly brushing them from the record as "simply figments of the fertile imagination of the Petitioners".

At Page 5 of his Response, Father contends the Mother took possession of the *children* in contravention of the 1970 Indiana judgment and the 1973 Kentucky judgment. The Father's counsel knows there is not a scintilla of evidence in the record that Andre was abducted. The record is clear—after Andre overdosed and nearly killed himself on the Father's beer and Valium in the custodial home, the Father called a child psychologist who insisted Andre be given to the Mother immediately.

> "The Court: *Mr. Zigoris, did you agree to let Andre live with them?*
>
> Mr. Zigoris: *Yes, I did.*" (Petitioner's App., p. 70)

To like effect is Andre's testimony (Petitioner's App., p. 69).

Respondent would lead this Court to believe that there was a hearing in Florida, when in fact, there was no hearing. Judge Dykes overruled an order of temporary custody awarded by another Florida judge to the Mother of both children, heard no testimony and summarily ordered Alexia, not Andre, be sent to Indiana without giving any consideration to changed circumstances, the drug abuse of the Father, or his parental neglect and misconduct.

Fortunately to the contrary, the Illinois Trial Judge quickly recognized there were changed circumstances since the 1973 Kentucky Judgment, and that there had

been no hearing as to the Father's misconduct or the present welfare of the children.

> *The Court:* "Where it appears that there has been no full hearing where all the parties have been present, including the children, then they do not grant full faith and credit, and *it appears from the pleadings and all the records here that perhaps no complete hearing has been held in this matter.*" (Petitioner's Petition, p. 3, R-168)

Illinois Judge Whitmer had verified pleadings, the parties, the children, counsel and witnesses before him when he granted temporary custody to the Mother December 18, 1978, as formalized by a written order in February 1979.

Respondent contends the Kentucky Trial Court who was simply requested to enforce the Illinois Support Order under Full Faith and Credit heard testimony of the parties. It is respectfully submitted there is nothing in the record to show testimony of the parties, nor does such testimony exist.

Finally, Respondent characterizes the Father's drug abuse and parental misconduct and neglect as "simply figments of the fertile imagination of the Petitioners."

Can the Respondent in this Court, the Highest Court of our Land, seriously deny the Father's possession of over a pound of marijuana (10/31/76) when the Indiana judge admitted he had prior knowledge of the marijuana under the Father's bed (Petitioners' App., p. 69) and Andre so testified while his Father sat in silent acquiescence in open court (Petitioner's App., p. 69).

Can this Respondent seriously deny the Father's continued use of marijuana and excessive Valium in

the custodial home over a period of years? (see Andre's testimony, Petitioner's App., p. 70) and Andre's undenied affidavits, Petitioner's App., pp. 71-76).

Can this Respondent seriously deny Andre nearly killed himself from an overdose of his Father's Valium and beer in the custodial home in the fall of 1977? (see Andre's testimony, Petitioner's App., p. 68 and Andre's affidavits, undenied, Petitioner's App., pp. 71-76). Apparently counsel for Respondent would lead this Court to believe the life threatening episode of this little boy was not an emergency. Should the Mother wait for a subsequent, more severely drug induced suicidal attempt?

Can this Respondent seriously deny the obvious mental and physical devastation the Father's drugs caused Andre culminating in Andre being admitted to a chemical dependency center in Minneapolis, Minnesota for four months in 1979? (see Hospital Invoices, Petitioner's App., p. 85)

This undenied testimony, these uncontradicted affidavits and hospital invoices are just some of the mountainous, cumulative evidence in the record which leads to the inescapable conclusion they are not figments of anybody's fertile imagination. They are undenied facts, fully corroborated and supported by the record and the testimony in this case.

## ARGUMENT

Respondent, at pages 10 and 11, concedes that Section 8 of the UCCJA (Child abduction) applies only where the Court otherwise has jurisdiction to modify a custody decree and that the Kentucky Courts did not have jurisdiction to modify the Illinois judgment.

Respondent then posits the argument that the Illinois judgment is improper under the standards of the Uniform Act, which was not in existence at the time the Illinois Trial Court assumed subject matter jurisdiction. In other words, the Illinois Court should have applied a statute not before him. The incongruous position of this argument answers itself.

Respondent then cites *Freeman* v. *Freeman,* Ky., 547 S. W. 2d 437 (1977); *Wood* v. *Graham,* Ky., 633 S. W. 2d 4040 (1982); *in Re Marriage of Hopson,* 110 Cal. App. 3d 884, 168 Cal. Rptr. 345 (1980); and *Goff* v. *Goff,* Ky., 323 S. W. 2d 209 (1959).

We submit that all of these cases are inapposite not only to Respondent's argument but also to the facts in this case.

*Wood* v. *Graham, supra.* Two days prior to the filing of the Petition for Dissolution of Marriage and custody of the child, the Father, a Kentucky resident, brought the child to Kentucky. The Kentucky Supreme Court held Kentucky did not have jurisdiction, the Father had not met the jurisdictional aspects of the UCCJA which requires six months residence. *Wood* was a modification of custody case, which is not the issue here. None of the parties or the children are residents of Kentucky.

*Freeman* v. *Freeman, supra.* The issue in *Freeman* was whether Kentucky had jurisdiction based on the Mother's attempted residence in Kentucky. *Freeman* is inapposite as all parties in this case are non-residents of Kentucky.

*In Re Marriage of Hopson, supra.* The California Court concluded it was the proper forum under the UCCJA to determine the best interests of the children

and ignored prior Arizona and Tennessee decrees. The Court acknowledged it was not dealing with a parent's child abuse, but merely with the desires of the children. The *Hopson* case is inapplicable because the instant case is not a custody modification case, the parties being non-residents of Kentucky, no Kentucky decree being involved, and Kentucky not being a forum for the future welfare of the children.

*Goff* v. *Goff, supra*. *Goff* is a Kentucky modification case concerning Kentucky parties and involves no Full Faith and Credit question.

Respondent persists in dragging a red herring into these proceedings, to-wit, the application of the UCCJA, which was not in existence in Illinois at the time Illinois assumed jurisdiction and is inapplicable here.

The Kentucky UCCJA, inescapably has no application because (1) the child abduction features of Section 8(b) do not come into operation unless there is a custody modification issue before the Kentucky Court; (2) when child abuse is involved the emergency exception recognized by the UCCJA overrides the child abduction features—Section 8(b) starts with "unless required in the interests of the child" and (3) a state cannot legislate into law Full Faith and Credit, or the denial thereof, which is solely within the province of the U. S. Supreme Court and Congress.

It is submitted the Respondent not only persists in this red herring argument, but tries to stretch it into a factual situation which obviously does not exist—arguing Andre, by implication of the word "children," was abducted. Respondent knows this isn't true and that the record overwhelmingly establishes a classic

case of drug abuse by the Father culminating in his minor son's hospitalization for drug addiction caused by the father's use of illegal marijuana and excessive valium.

Finally, Respondent, in this Court and all other Courts, has failed to distinguish the controlling decisions of the U. S. Supreme Court or to cite any U. S. Supreme Court cases holding Full Faith and Credit should not be given to the Illinois judgment in this case by the Kentucky Courts.

Simply stated, the Illinois judgment was based on in personam jurisdiction. It is final and non-modifiable. It cannot be collaterally attacked by a Kentucky Court.

This U. S. Supreme Court has ruled accrued child support judgments are entitled to mandatory Full Faith and Credit as a matter of federal law, *Sistare* v. *Sistare,* 218 U. S. 1, 30 S. Ct. 682, 54 L. Ed. 905 (1910) and *Yarborough* v. *Yarborough,* 290 U. S. 202, 54 S. Ct. 181, 78 L. Ed. 269 (1933).

This U. S. Supreme Court has directly ruled the Full Faith and Credit clause of the Constitution precludes any inquiry into the merits of the cause of the action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. *Milliken* v. *Meyer,* 311 U. S. 457, 462, 61 S. Ct. 339, 342, 85 L. Ed. 278, 282-83 (1940).

Jurisdiction of the subject matter in the Illinois decree is not subject to collateral or appellate attack by a sister state when (1) there is an in personam judgment in Illinois; (2) the parties appeared by counsel and in person; and (3) the subject matter of Illinois jurisdiction was contested and fully litigated

both at the trial level and the appellate level in Illinois. *Davis* v. *Davis,* 305 U. S. 32, 59 S. Ct. 3, 83 L. Ed. 26 (1938); *Sherrer* v. *Sherrer,* 334 U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 2d 1429 (1948); *Coe* v. *Coe,* 334 U. S. 378, 68 S. Ct. 1094, 92 L. Ed. 1451, (1948); *Williams* v. *North Carolina,* 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577 (1945).

## CONCLUSION

Petitioner requests a Writ of Certiorari be granted and a summary disposition by this Court reversing the decision of the Kentucky Supreme Court and remanding it with directions to enter an order recognizing the Illinois child support order.

Respectfully submitted,

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# APPENDIX

**EXHIBIT 1**

# JEFFERSON CIRCUIT COURT

SECOND DIVISION (2)
COMMONWEALTH OF KENTUCKY

**No. 80 CI-06156**

---

SHIRLEY ZIGORIS MCGAUGHEY,
GUY E. MCGAUGHEY, JR., - - - - - *Petitioners,*

*v.*

MARK ZIGORIS, - - - - - - - *Respondent.*

---

## MOTION FOR SUMMARY JUDGMENT ON PETITION

Comes now the Petitioners by Counsel and moves for a Summary Judgment on the Petition, filed herein, and the Response thereto and in support thereof shows the Court as follows:

1. Notwithstanding the allegations in Respondent's Response filed herein, Mark Zigoris was served personally in the State of Illinois on the 19th day of August 1978 by the Sheriff of Lawrence County, Illinois. This is not a case of a non-resident being served outside the State of Illinois or by publication or mail. Mark Zigoris, Respondent herein, was served in Lawrence County, Illinois; personal jurisdiction of the Illinois Court was obtained thereby. An authenticated copy of the Summons is attached hereto as Exhibit A and *must be accorded full faith and credit under the applicable statutes and the Constitutions of the U. S. Government, Kentucky and Illinois.*

2. That the Defendant Mark Zigoris appeared personally in 1978 in the courtroom before Judge Robert Whitmer in Lawrence County, Illinois with his attorney, Mr. Robert Douglas, and raised the question of whether or not the Illinois Court had the power under its applicable statutes

to assume jurisdiction of the custody of the children, and modify the outstanding Decree in Indiana. The Court held that Mark Zigoris was before the Court in personam and that the Court had, as a result of his being served in Illinois, further jurisdiction to modify the custody decree of the State of Indiana as to two minor children, Andre Zigoris and Alexia Zigoris, who were residents of Illinois.

3. That Mark Zigoris, through his attorney, applied for a Certificate of Importance on the question of jurisdiction of the Lawrence County, Illinois Circuit Court awarding custody to the mother, Shirley Zigoris McGaughey whereupon the Lawrence County Circuit Court granted said Certificate in order for Mark Zigoris to appeal the question of jurisdiction of the custody to the Appellate Court of the Fourth District of the State of Illinois. The Appellate Court of the Fourth District of the State of Illinois affirmed the decision of the Lawrence County Circuit Court stating that the Circuit Court acted properly and the Illinois Court did have jurisdiction to modify the custodial decree. There was no question as to its having had personal jurisdiction of Mark Zigoris because he was served with summons in Illinois.

4. At a hearing on the question of support payments, Mark Zigoris appeared through his new Counsel, Irving Wiseman, of Alton, Illinois and stated that there was no in personam jurisdiction because Mark Zigoris was a non-resident. The Circuit Court promptly dismissed and denied this argument of Mark Zigoris because even though he was a non-resident of the State of Illinois, he was personally *served within the confines of Illinois.* Non-resident statutes are not applicable in situations where Mark Zigoris was served *in* the State of Illinois.

5. After notice to Mark Zigoris, a hearing was held on the question of custody payments and an award was entered. Mark Zigoris refused to attend the Court's session and was found to be in contempt of Court and an attachment has been issued for picking up Mark Zigoris and bringing him before the Lawrence County Circuit Court of

the State of Illinois. These *decrees are entitled to full faith and credit by* the Jefferson Circuit Court or any other Court in this land. Authenticated copies of these decrees and the supporting docket sheet are attached as Exhibits B, C and D.

6. Respondent is attempting in his Response filed herein to re-open the question of custody by this Kentucky Court but the question of custody is not and cannot be open for consideration by the Jefferson Circuit Court for the following reasons, to-wit:

a. The father and the mother are not residents of the State of Kentucky. The mother is a resident of the State of Illinois and the father is a resident of the State of Indiana.

b. The two minor children whose custody has been awarded to the mother by the Illinois Courts have lived in Illinois for more than two years and are residents of the State of Illinois and have been residents for more than two years. They are not residents of the State of Kentucky.

c. Absent the residence of the mother, the father and the children in Kentucky, *there is no way the Uniform Custody Act can be invoked in this case because the jurisdictional requirements provided in the Uniform Child Custody Act as enacted by the Kentucky legislature to modify a decree of Illinois Courts are absent.*

d. This Court does not have appellate jurisdiction over the Circuit Court of Lawrence County, Illinois, or the Appellate Court of Illinois.

7. That the Court should proceed without delay to enforce the orders of the Circuit Court of Illinois because of the following reasons:

a. The father introduced drugs to his infant nine year old son whereby the son became addicted, a user

and even a dealer in drugs which is the reason for the father having given voluntary custody of the child to the mother at the command of an attending child psychologist.

b. That the child has been taken by the mother to a drug center in Minneapolis, Minnesota for treatment of a drug problem which the father caused. The Court decree of the State of Illinois provides that the father should pay the hospital bill in Minneapolis, Minnesota.

c. The father has not, for more than two years, contributed one cent to the clothing, medical care, food or any other necessities of the children.

d. That to delay this case any further would be an injustice to the children because the father is trying to abandon his duty to support the children through various legal maneuvers which have all failed. This one has to fail also.

This Petitioner therefore summarily moves that this Court enter judgment on the foreign judgment as set forth so the interests of the children will no longer be put in jeopardy and that the orders of the Circuit Court of Lawrence County, Illinois be placed on record as a foreign judgment so collection proceedings may be pursued. *Mark Zigoris is chairman of a dental department of the University of Louisville, he has a private dental practice, he has recently married, he has a new home, he has bought a new car, but nowhere in his pocketbook or in his heart can he find any money, not one red cent, to support his children.*

There need be no further delay in the enforcement of this judgment.

As to the issues of his being reimbursed for attorney's fees, which he has incurred, it is the position of the Petitioner that if that is a triable issue, then the mother is entitled to amend her pleadings and to a trial on the reimbursement of more than $65,000.00 worth of attorney's fees which she has incurred in protecting the health, the welfare and the best interests of the children. The issue of

attorney's fees has nothing to do with the father supporting his children promptly and should not prejudice or delay a summary judgment *on the orders of the Illinois Court for support payments to his two minor children which are entitled to full faith and credit* by this Kentucky Court.

There is no genuine issue as to any material fact that Mark Zigoris was served personally in Illinois, he has had *his* day in Court there and the moving party is entitled to a judgment as a matter of law. Affidavits are attached.

(s) Jerry Ulrich
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